the poorest people in developing countries by authorizing $375 million in microenterprise loans.

Microenterprise loan assist people in overcoming poverty through participation in the private sector and are a successful means to combating the debilitating level of poverty in the developing world.

It has been estimated that the number of microenterprises range from one-third to one-half of the world's businesses.

However, there are major challenges for microenterpreuenurs who face several impediments to improving their productivity and standard of living such as a lack of skills and market access, legal barriers, and especially, an absence of capital.

This bill will open unlimited doors of opportunity for the world's poorest people. Many microenterprise loans are less than a $100. What may seem to Americans as a relatively small amount of money, can change the lives of families and communities.

Take for instance a woman in Ghana who tries to make a living selling donuts in her village, but is limited to how many she can make in a day with her own hands. With a small amount of money, this same woman is able to purchase equipment that can make more than one donut at a time and increase sales and profit. This in turn elevates the standard of living for herself and her family.

A relatively small amount of capital can help empower the world's poorest people and help them graduate from the lowest levels of poverty.

Microenterprise loans are an important part of our country's foreign assistance program. I commend this body for taking up this important measure.

Mr. Speaker, I am pleased to be a co-sponsor of this bill and I urge its passage.

Mr. SULLIVAN. Mr. Speaker, today I rise in support of H.R. 192 to amend the Microenterprise for Self-Reliance Act of 2000 and the Foreign Assistance Act of 1961 to increase assistance for the poorest people in developing countries.

Microenterprise programs give poor borrowers the capacity to improve the quality of their lives and the futures of their children. It helps very poor people start or expand self-employment ventures and pull themselves out of poverty.

If we are looking for ways to achieve the Millennium Development goal of cutting the severe poverty of over 1 billion people in half by 2015, there is no more direct way than expanding access to Microenterprise. These programs are reaching over 25 million very poor borrowers—with an average family of five—that's over 125 million people touched by Microenterprise. It can have a crucial role to play in families and communities by providing additional income and the money used to obtain better food, housing and education.

Microenterprise is a powerful anti-poverty tool, and it is most powerful in the hands of the poorest people. Mr. Speaker, I encourage passage of H.R. 192 and I yield back the balance of my time.

Mr. SMITH of New Jersey. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey (Mr. SMITH) that the House suspend the rules and pass the bill, H.R. 192.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

PENSION SECURITY ACT OF 2003

Mr. LINDER. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 230 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 230

Resolved, That upon the adoption of this resolution it shall be in order to consider in the House the bill (H.R. 1000) to amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to provide additional protections to participants and beneficiaries in individual account plans from excessive investment in employer securities and to promote the provision of retirement investment advice to workers managing their retirement income assets. The bill shall be considered as read for amendment. The amendment recommended by the Committee on Education and the Workforce now printed in the bill shall be considered as adopted. All points of order against the bill, as amended, are waived. The previous question shall be considered as ordered on the bill, as amended, and on any further amendment thereto to final passage without intervening motion except: (1) one hour and 20 minutes of debate on the bill, as amended, equally divided among and controlled by the chairmen and ranking minority members of the Committee on Education and the Workforce and the Committee on Ways and Means; (2) the further amendment printed in the report of the Committee on Rules accompanying this resolution, if offered by Representative George Miller of California or his designee, which shall be in order without intervention of any point of order, shall be considered as read, and shall be separately debatable for one hour equally divided and controlled by the proponent and an opponent; and (3) one motion to recommit with or without instructions.

The SPEAKER pro tempore. The gentleman from Georgia (Mr. LINDER) is recognized for 1 hour.

Mr. LINDER. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentlewoman from New York (Ms. SLAUGHTER), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, H. Res. 230 is a modified, closed rule that provides for the consideration of H.R. 1000, the Pension Security Act of 2003. This rule provides for 1 hour and 20 minutes of general debate, with 40 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Education and the Workforce, and 40 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means. H.R. 230 provides that the amendment recommended by the Committee on Education and the Workforce now printed in the bill shall be considered as adopted. It waives all points of order against the bill, as amended.

The rule makes in order the amendment printed in the report of the Committee on Rules accompanying the resolution, if offered, by the gentleman from California (Mr. GEORGE MILLER) or his designee, which shall be considered as read and shall be separately debatable for 1 hour, equally divided and controlled by the proponent and an opponent. H.R. 230 waives all points of order against the amendment printed in the report and provides one motion to recommit, with or without instructions.

With respect to H.R. 1000, I want to again commend the gentleman from Ohio (Mr. BOEHNER), chairman of the full Committee on Education and the Workforce, for leadership that he is exhibiting to American workers who want and need enhanced retirement security here in the 21st century. To his credit, the gentleman from Ohio (Mr. BOEHNER) brought similar retirement security legislation to the House Floor in November of 2001. The House passed that bill, H.R. 2269, with a 230 to 144 vote. Unfortunately, that vote died in the Senate.

□ 1200

Again, in April of last year the gentleman from Ohio (Mr. BOEHNER) brought legislation to the floor that sought to implement a series of pension reforms sought by President Bush; and the House passed that bill, H.R. 3762, with a 255–163 vote. Again, the bill died in the Senate.

Well, as the saying goes, the third time is a charm, as the gentleman from Ohio (Mr. BOEHNER) has brought retirement security legislation to the House floor today which the House should promptly pass over to the Senate so that the Chamber's new leadership has a chance to move it through the body. If so, I fully expect that President Bush would sign such a bill into law.

Some of the key elements of H.R. 1000 include giving workers the flexibility and freedom to diversify the holdings within their 401(k) plans; providing workers with high-quality investment advice as they exert more and more control over their nest eggs; amending Federal law to ensure that employers have fiduciary responsibility for employees' savings during blackout periods when employees are barred from changing their 401(k) investments; requiring employers to provide quarterly benefit statements to workers about retirement accounts; and, finally, a series of reforms designed to simplify pension requirements for small businesses that want to offer their workers defined benefit plans.

All of these reforms will help enhance the retirement security of millions of American workers. I look forward to supporting this bill.

In conclusion, Mr. Speaker, H. Res. 230 is a modified closed rule that will

give the full House an opportunity to work its will on H.R. 1000 or the substitute put forward by the gentleman from California (Mr. GEORGE MILLER). I urge my colleagues to support the rule so we can move on to the underlying legislation.

Mr. Speaker, I yield such time as he may consume to the gentleman from Maryland (Mr. CARDIN), if he would like to make some comments on the bill.

Mr. CARDIN. Mr. Speaker, let me thank my friend for his generosity considering I am on the other side of the issue on this rule. I very much appreciate him yielding me time.

Mr. Speaker, I rise in opposition to this rule. The rule does deny any amendments. There are amendments that need to be considered by this body if we are going to protect workers.

It is interesting, Mr. Speaker, that this bill comes to us as the workers' protection legislation, yet it does not afford adequate protection to our workers. But what concerns me the most, Mr. Speaker, is over the last 2 years our economy has lost 2.7 million private sector jobs. This is twice the amount of job loss as compared to the last recession, and yet we provide only one half of the amount of extended unemployment benefits to dislocated workers and their families.

It is for that reason, Mr. Speaker, that at the end of our debate we will be asking the House to reject the previous question so that we can offer an amendment that will provide for the extension of Federal unemployment insurance benefits.

This is urgent. The current Federal unemployment insurance benefit program is scheduled to terminate at the end of this month. Even though we know that one million workers, one million workers have already exhausted their Federal unemployment insurance benefits, the legislation that we have filed would give them an additional 13 weeks.

Mr. Speaker, we know that in the next 6 months 2 million workers will exhaust their State unemployment insurance benefits. Now, the legislation that we have currently extended will only provide unemployment insurance benefits for those who are on the program. No new enrollees. Two million Americans will be affected during the next 6 months. We had $21 billion in the Federal unemployment insurance funds to pay for those benefits, so it is paid for.

The Committee on Rules allowed for provisions within the jurisdiction of the Committee on Ways and Means in the underlying legislation that we will be considering if this rule is approved, yet the legislation was not considered by the Committee on Ways and Means. So, therefore, Mr. Speaker, I think it is very appropriate that this body permit us to consider during the debate of this legislation, which is aimed at protecting workers, the extension of Federal unemployment insurance benefits. It is going to be one of the last opportunities that we will have to consider this before the Federal unemployment insurance benefit program has exhausted and those that are unemployed are going to be without.

So, Mr. Speaker, I would urge my colleagues to defeat the previous question and, if necessary, defeat the rule so that we have an opportunity to take up the extension of the Federal unemployment insurance benefits that affect millions of our workers.

Mr. LINDER. Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield myself such time as I may consume.

(Ms. SLAUGHTER asked and was given permission to revise and extend her remarks.)

Ms. SLAUGHTER. Mr. Speaker, let me apologize for my misunderstanding of the time.

Mr. Speaker, our workforce is what made the United States the great Nation it is, but here we are debating yet another bill that erodes protections for our workers. Here we go again sending another message to our workforce that we just do not care that short-term gain for a few is more important to us than the economic well-being of the Nation.

Life for the American worker continues to be arduous and uncertain, Mr. Speaker. Unemployment has risen 6 percent. In my home State of New York, the unemployment rate is even higher at 6.3. Unemployment insurance benefits expire at the end of this month even though almost 9 million Americans are without work. Nothing on the legislative horizon confronts the needs of the millions of the jobless.

Mr. Speaker, this body and this administration have failed the American worker and continue to do so with this bill. Recently, this esteemed body had several opportunities to tackle the plight of the laidoff factory workers, the unemployed bookkeepers, and this Chamber squandered those chances. Today, the House has another opportunity to assist American workers by continuing the necessary reforms so painfully highlighted by the collapse of major corporations like Enron, WorldCom, Global Crossing. The employees of WorldCom lost $25 million. Enron employees lost $800 million. And the American workforce nervously looks to us to protect their pensions and their life savings. And unfortunately, H.R. 1000 does not go far enough to protect pensions. In fact, this legislation actually harms American workers with what it does and what it fails to do. We must show the people, whose faith and trust sent us here, that we did learn the painful lessons of the Enron, the WorldCom, and the Global Crossing crises.

H.R. 1000 would permit companies to convert traditional defined benefit pension plans into cash balance pension plans. This saves the corporations millions of dollars, but it cuts by half the pension benefits of retired workers, and employees have no control over the conversion.

Now, why is the control of your pension plan given to a company with the self-interest of saving millions of dollars? Even more egregious is that, as companies have been slashing benefits for their workers, they have been increasing compensation packages for their CEOs. Further, this bill handcuffs employees for 3 years after the contribution of company-matched stocks. Under current law, workers are protected from financial advisors with conflicts of interest. This bill strikes this protection from ERISA and allows financial advisors to recommend products from their own firms and even earn fees for pushing certain products. In fact, the Attorney General of the State of New York just settled with 10 of the most respected investment firms for $1.4 billion because these firms offered self-interested investment advice.

H.R. 1000 further fails the American workers in its omission of requirements that companies inform employees when someone dumps large amounts of the company stock. You recall that was a serious issue for the Enron employees. When former Enron CEO Ken Lay sold his Enron stock, he unloaded 1.8 million shares for $101.3 million, did not tell his employees, left them in the dark, and they lost their life savings. Indeed, throughout that period, the employees were urged to buy more and more Enron stock.

Last night the Committee on Rules passed a rule that does not allow this body through debate to delve into the complex issues of ERISA and securing retirement funds.

H. Res. 230 allows only 80 minutes of debate on the bill. This rule is just another example of the erosion of this institution as a deliberative body.

Mr. Speaker, the American workforce deserves our profound respect; and, Mr. Speaker, they have no one else to turn to but us. Over and over we have failed them. They deserve the pensions they were promised during their years of service. How heartbreaking it is for someone who has spent 30 years of their life with a single company, always being partially responsible for the profit of that company, to then lose a major part of that pension. And the almost-9 million unemployed deserve an extension on unemployment insurance to keep them afloat in a sea of economic uncertainty. I just had a letter in my office from a man who has been out of work now for 19 months with absolutely no outlook that he will find anything soon and asking me what in the world can he do. We try to answer that question often, Mr. Speaker; and it does this House no good that the answer we have is that we have refused to extend unemployment benefits.

I urge my colleagues to oppose the rule and oppose the underlying bill.

Mr. Speaker, I reserve the balance of my time.

Mr. LINDER. Mr. Speaker, I yield such time as he may consume to the gentleman from Indiana (Mr. BUYER).

Mr. BUYER. Mr. Speaker, before I address this issue, I would say to the gentlewoman that just spoke, I want to give people a job. I do not want to give people an unemployment check. Get them a job. Vote for the President's economic plan. So you can have your constituent get into the details of the plan.

Right now I rise to talk about the rule for H.R. 1000, and, more importantly, on the opportunity Members of Congress have to make a change in law. The purpose of the Federal Government is to help those who cannot help themselves.

Earlier this year, a case was brought to my attention in Clermont, Indiana, that needs to be addressed. An employee of the town embezzled $70,000, an amount that may not seem like a lot of money to some of us here when our daily discussions revolve around billions of dollars and millions; but this is a significant sum to a very small town.

After the former employee was found guilty, the town obtained a civil judgment for restitution for $51,000. So far the employee has paid only $510 in restitution. The former employee has a private pension. No other form of compensation. That is it. Under ERISA, the restitution order attained by the town cannot be attached to the pension, so the town loses out on $50,000 and the guilty avoids complying with the judgment.

How can we allow the law to be manipulated like this? Clearly, there is a hole in the justice system that needs to be filled. The pension law is being used to avoid making victims whole. In this case, the victim is government. I had hoped to offer an amendment in the Committee on Rules to fill this hole. However, the amendment was not made in order. This amendment would permit States and local governments to obtain restitution from private pensions pursuant to court-ordered restitution for the embezzlement of State and local funds. Those communities, including Clermont, are true victims of embezzlement. This is a narrowly drafted amendment. And the very purpose of the restitution order is to make victims whole. So when you think about this, how is justice being served by allowing our present system to stay in place?

Look at an example of an individual that is sentenced to 10 years to prison. Maybe they have a $20,000 pension that goes into an account, so when they get out of prison after a two-for-one good time, after 5 years they have $100,000 sitting in an account. That is money which can make individuals whole, except under present law you cannot attach a garnishment to that civil order.

□ 1215

I think that is wrong.

I know that there was an effort to make this ''a clean bill,'' and nobody wanted to have amendments to the bill. I think our job is to choose the harder right over the easier wrong.

So what? If it is hard, do that which is hard, and make justice serve those of whom have been victimized. I am on the floor today greatly disappointed that we just wanted to get something done quickly rather than address a hole in the law.

I am not pleased at all that this amendment was denied, but what I am most hopeful is that the committee of jurisdiction actually examines this, because I am not going to let this one go. I think this one, in fact, we have to address, and I will stand down to the Committee on Rules at this point.

I wanted to bring this issue to the attention of the Members because my little town of Clermont, I am sure, is highly representative of other towns and communities, States and Federal and local governments of whom have been victimized by some form of embezzlement.

Ms. SLAUGHTER. Mr. Speaker, I yield 2 minutes to the gentleman from Michigan (Mr. LEVIN).

(Mr. LEVIN asked and was given permission to revise and extend his remarks.)

Mr. LEVIN. Mr. Speaker, the previous speaker has made it clear, I hope, to the country why we are asking that the previous question be voted down so we can bring up the unemployment comp issue. He has said let us get jobs for workers, not provide unemployment comp checks. Look, the people who are unemployed are looking for work. They want a job. There is no job when they seek it, and what the Republicans and the House are essentially saying to those workers who are looking for work and cannot find a job, tough luck. We can do much better.

A recent survey indicated that the average unemployed worker has applied for 29 jobs without finding work, and the average unemployed worker over 45 has applied for 42 jobs without finding work. Almost 9 million people out of work. Over 1 million have exhausted their benefits, and by the end of this month, it will be 1.4 million. And now each month another couple hundred thousand are going to be exhausting their benefits, out in the cold because of the cold shoulder of this House majority. That is why we are asking that the previous question be voted down.

Ten years ago we did much better. We did not hear this talk, get a job, to people who are looking for work and cannot find it. So we will proudly ask, give us a chance. My colleagues have been on the Republican side derelict in their duty, and we are willing to stand up and say to the people who are unemployed, yes, keep looking for work. Unemployment comp benefits will help grow the economy because they will spend the money they receive on benefits, but we are also saying while they are looking for work, we are not going to turn a cold shoulder to the unemployed of the United States of America.

Ms. SLAUGHTER. Mr. Speaker, I yield 3 minutes to the gentleman from Ohio (Mr. KUCINICH).

Mr. KUCINICH. Mr. Speaker, this is a bad rule and this is a bad bill.

Today the bulk of the Nation's pension plans have less than 100 participants, and a gap in ERISA enforcement and in ERISA law leaves these workers' retirement savings at grave risk. Yet H.R. 1000 does nothing to correct this problem, and the majority refused to even consider a common-sense amendment I offered to protect workers' pensions through the most basic of means, simply by ensuring that plan fiduciaries actually file their forms.

Eclipsed by the high-profile pension scandals at large corporations such as Enron, WorldCom and Global Crossing, thousands of other employees around the country have been no less harmed by gross fiduciary malfeasance at smaller, less notable companies.

In my own district a group of 19 employees saw their retirement funds vanish as their employer, Lakewood Manufacturing Company, repeatedly dismissed employee requests for the release of plan documents, and ultimately closed, having lost over $2 million in pension funds, the entire pension plan.

Later investigation revealed that over a period of 3 years, the plan's fiduciary, also the owner of the company, used funds from the employee pension plan to make dangerous and poorly diversified investments in companies for which he had a personal stake, such as the Psychic Discovery Network, now bankrupt. Even worse, the Department of Labor failed to investigate the plan even though the company did not file the most basic plan summary document, Form 5500, required by law, for 3 consecutive years. Though we may never see the case of Lakewood Manufacturing featured on the nightly news, its former employees face a financial future no different than that of Enron's employees.

For small pension plans, Form 5500 is the only avenue for the Department of Labor to monitor compliance with ERISA. Yet, as the Lakewood case highlights, and a GAO report has confirmed, ERISA enforcement is such that fiduciaries of small plans may simply fail to file a Form 5500 while mismanaging or stealing money from the plan, knowing they will likely slip through the cracks.

As a result, I proposed an amendment to fix this egregious enforcement gap in ERISA law. My amendment would have required plans to submit their forms within 3 months of the end of the plan year, not the 9.5 months as is allowed in the current law. It also insists that the first priority of the Department of Labor should be to identify those companies that have not filed their documents by the deadline and give them the power to freeze assets of the plan fiduciary until the documents are submitted or the plan is thoroughly investigated.

This bill does not fix that gap, this H.R. 1000, and, in fact, the majority even refused to consider this basic change in law. They did not want the opportunity to take a stand to protect workers whose retirement security is predicated on their boss' willingness to submit a form.

I am going to introduce an amendment today to try to amend the bill at the correct time, and I appreciate the support of the Members for that. This rule will not correct the problem.

Ms. SLAUGHTER. Mr. Speaker, I yield 3 minutes to the gentleman from Vermont (Mr. SANDERS).

Mr. SANDERS. Mr. Speaker, I thank my friend, the gentlewoman from New York (Ms. SLAUGHTER) for yielding me the time.

Mr. Speaker, I rise in strong opposition to this rule. Yesterday I requested that two amendments be allowed, neither one of which was accepted.

Mr. Speaker, I first became involved in the issue of pensions in the State of Vermont when hundreds of employees of IBM contacted my office because one day they learned that the promises that had been made to them in terms of their pension benefits was simply being pushed under the rug and being dismissed; that, in fact, the company had converted from a defined benefit pension plan to a so-called cash balance benefit plan; and that for many of the older workers, their benefits would have been reduced by up to 50 percent. People that had worked at the company for 20 or 30 years wake up one day and say, sorry, forget everything that we told you, because we are going to cut your pension benefits by up to 50 percent if you are an older worker.

It turned out it was not just IBM, but companies all over this country. In Vermont IBM workers fought back. We had a town meeting with some 7- or 800 workers coming out, spread all over the country, and IBM had to rescind that proposal. But the reality is that the Bush administration has now come up with an idea that would make it easier for companies to slash the pensions of their workers by moving to cash balance programs.

My amendment would do a very simple thing that some good companies have already done. Kodak has done it. Motorola has done it. To some degree IBM has done it. CSX, John Snow, Treasury Secretary's company has done it, and that says that if one is an older worker working for the company for at least 10 years, or they are 40 years of age, they will have the choice about which proposal they will take, and older workers, of course, will stay with the defined benefit pension plan.

The second amendment that I introduced was a very interesting one, and I said if the Republicans think that cash balance payments are such a good idea, and we all have our pensions, why should we not go to cash balance benefits? The answer is that cash balance benefits will substantially lower the pensions that Members of Congress have. Of course, the Members of Congress will not reduce their own pensions, but they are prepared to force millions of American workers to lower their benefits by going to cash balance benefit plans. So my proposal said that if the President's idea goes forward, on that very day, Members of Congress will move to cash balance benefit pension plans as well and see the same reduction in their benefits as do millions of American workers. Amazingly enough, they did not put that amendment on the floor.

Ms. SLAUGHTER. Mr. Speaker, I am pleased to yield 2 minutes to the gentlewoman from California (Ms. WOOLSEY).

(Ms. WOOLSEY asked and was given permission to revise and extend her remarks.)

Ms. WOOLSEY. Mr. Speaker, I oppose this rule for excluding the conversation and debate on unemployment insurance, and I support the Miller substitute because it levels the playing field between a corporation's top executives and the rest of the employees. This substitute actually supports what is good for the captain is good for the crew.

It truly protects employees against the kinds of total pension loss experienced by Enron employees by requiring companies to give their employees full and accurate information about their pension benefits and about any employer's stock in the pension plan.

It ensures employees are armed with good information and allows for timely discussions about investing the funds in the pension plan, and, Mr. Speaker, should the employee pension funds be misused, the Miller substitute gives employees a real opportunity to get their money back.

My constituents just north of the Golden Gate Bridge, across from San Francisco, tell me they are disgusted by the special protections given to executives while employees are suffering. Only the Miller substitute provides the pension protections employees truly need, and only a rule that allows discussion for unemployment insurance being extended protects the workers in this country who have lost their employment because of a terrible, terrible economy, a war economy, caused by huge tax breaks for the wealthiest in the country.

Mr. Speaker, I urge my colleagues to vote against this rule and vote for real reform by supporting the Miller substitute.

Mr. LINDER. Mr. Speaker, may I inquire as to how much time is left on each side?

The SPEAKER pro tempore (Mr. BASS). The gentleman from Georgia (Mr. LINDER) has 20 minutes remaining. The gentlewoman from New York (Ms. SLAUGHTER) has 15 minutes remaining.

Mr. LINDER. Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield 4 minutes to the gentleman from California (Mr. GEORGE MILLER).

Mr. GEORGE MILLER of California. Mr. Speaker, I thank the gentlewoman from New York for yielding me this time.

Mr. Speaker, today we confront an issue that is absolutely fundamental to the interests of our constituents, to their well-being, and the question of whether or not they will have the assets to properly retire in the future, and that is because we address the issues of the security of the American pension system.

In the wake of the worst pension scandals in recent history, the response of the Republican congressional leadership is to see no evil, hear no evil and do no good.

Once again, in the shadow of the failures of Enron and Global Crossing, and with the new disclosures about Delta and American Airlines, the Republicans bring forward a pension bill that does nothing to help employees, but includes lucrative benefits for corporate interests. How tone-deaf can they be?

Pension scandals that move from page 3 of the business section to page 1 in every newspaper and magazine of popular nature of this country, but it is still the business as usual for Republicans in Congress. The only problem they see is that the investment companies are making even more money, while pensions and 401(k)s of employees dwindle with less and less.

The pension bill the Republicans want to steamroll through the House today fails to address the pension scandals that have outraged Americans and left so many Americans destitute. It is as though Enron and Global Crossing and these other pension scandals never happened. It is business as usual for business, and let the employees fend for themselves.

The heart of the Republican bill would change the law to allow investment firms for the first time to give biased and conflicted financial advice to employees, something that is currently prohibited under the law. Does this make sense when many of these same investment firms that would be giving the employees this advice just copped a plea to Eliot Spitzer, the New York attorney general, if firms like Credit Suisse, First Boston, Bear Stearns, JP Morgan, Chase, Goldman Sachs and many others just paid out over a billion and a half dollars in committing these kinds of abuses?

□ 1230

Now, I recognize that they do not think they copped a plea, because they said they did not admit any wrongdoing. But they paid $1.5 billion just in case they might have. That $1.5 billion is chump change alongside the hundreds and hundreds of billions of dollars that people lost in their pension plans during the stock market bubble and because of conflicted advice and bad advice.

Now, here we are 2 years after Enron, and we are coming back to simply allow the same thing to happen that

happened in those corporate scandals. It is no wonder that the American public, the small investor is reluctant to return to the stock market. It is no wonder they are reluctant to invest again in mutual funds, because they recognize the devastation that they received at the hands of what was essentially criminal activity. Today, the Republican bill makes that activity legal.

That is why the Attorney General, Eliot Spitzer, of New York said this about this legislation: ''This legislation opens the loophole that will sharply erode, rather than enhance, the safeguards for employees seeking independent and untainted advice about how to invest their retirement savings. Clearly, this bill puts the interests of Wall Street firms far ahead of the interests of millions of working Americans who simply want a fair shake in making sound decisions about their retirement investments.''

That is what the American public is entitled to. That is what the people are entitled to as they contemplate how to provide for their future retirement. That is not what this legislation does. That is not what the Republican legislation proposes. It now says that those firms can provide that conflicted advice to our constituents and to the workers, and that is what we should not allow in this legislation.

Ms. SLAUGHTER. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey (Mr. ANDREWS).

(Mr. ANDREWS asked and was given permission to revise and extend his remarks.)

Mr. ANDREWS. Mr. Speaker, I thank my friend for yielding me this time.

My colleagues, how does one get on the agenda of the United States House of Representatives? If you are in the financial industry and you are interested in changing the rules for giving pension advice, you can get on the agenda. If you are one of a plethora of special interests that is interested in changing the Internal Revenue Code, you can get on the agenda. But if you are one of the millions of people suffering unemployment in this country and you want this House to take up the question of whether your unemployment benefits ought to be extended, you cannot seem to get on the agenda.

Now, I know that there are people who believe that some of the people who are on unemployment are not trying hard to find a job, and I am sure there are some for whom that description is accurate; but I know this is true: for every three Americans looking for a job today, there is one job. One. And there are hundreds of thousands of people who at the end of this month are going to lose their ability to pay their bills because they are one of the two people who cannot get that one job out of every three people who is unemployed.

It is the business of this country, and it should be the business of this House, to debate whether or not an extension of unemployment benefits is justifiable for those people. I feel strongly that it is. I know there are Members who believe that it is not. I respect their views. The majority ought to respect our right to bring to this floor, before this House and before this country, the question as to whether those benefits ought to be extended.

In many households, Mr. Speaker, this is not some theoretical debate. It is a question of whether you will be able to pay your rent on the first of June, whether you will be able to pay your other bills on the first of June. Let us do the people's business. Let us put on the agenda of this House the question of whether to extend unemployment benefits.

Oppose the previous question.

Mr. LINDER. Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield myself such time as I may consume to close.

Mr. Speaker, if the previous question is defeated, I will offer an amendment to the rule. My amendment will provide that immediately after the House passes the Pension Security Act it will take up H.R. 1652, the Unemployment Benefits Extension Act. This bill will extend Federal unemployment benefits by 26 weeks and would also give a 13-week extension to those whose benefits have been exhausted.

Mr. Speaker, with unemployment rates increasing daily, this is the third month in a row, now that we are in May, that this economy has lost jobs. Of the 8.8 million unemployed, 2 million out of work for 27 weeks or more, the average length of unemployment is nearly 20 weeks, the highest since 1984. These Americans need relief, and they need it immediately.

Current Federal unemployment benefits expire at the end of this month, just 2½ weeks away. On two separate occasions last week, the Republicans in this House voted to block an opportunity to extend these benefits. Let us not let unemployed Americans down a third time. Let us bring this greatly needed responsible legislation to the floor for a vote.

Now, let me make very clear that a ''no'' vote on the previous question will not stop consideration of the pension security act. A ''no'' vote will allow the House to vote on H.R. 1000 and on H.R. 1652, the Unemployment Benefits Extension Act as well. However, a ''yes'' vote on the previous question will prevent the House from passing the desperately needed extension of Federal employment benefits to our unemployed workers one more time.

Make no mistake, this vote is the only opportunity the House will have to vote on extending Federal unemployment benefits. I urge a ''no'' vote on the previous question and remind my colleagues that these unemployed workers have no one to turn to but us, and they sent us here to do our best for our communities.

Mr. Speaker, I ask unanimous consent that the text of the amendment and a description of the amendment be printed in the RECORD immediately before the vote on the previous question.

The SPEAKER pro tempore (Mr. SHIMKUS). Is there objection to the request of the gentlewoman from New York?

There was no objection.

The material previously referred to by Ms. SLAUGHTER is as follows:

PREVIOUS QUESTION FOR H. RES. 230—RULE ON H.R. 1000: THE PENSION SECURITY ACT OF 2003

At the end of the resolution add the following new section:

Sec. . Immediately after disposition of the bill H.R. 1000, it shall be in order without intervention of any point of order to consider in the House the bill (H.R. 1652) to provide extended unemployment benefits to displaced workers, and to make other improvements in the unemployment insurance system. The bill shall be considered as read for amendment. The previous question shall be considered as ordered on the bill to final passage without intervening motion except: 1) one hour of debate equally divided and controlled by the Chairman and ranking Minority Member of the Committee on the Ways and Means; and 2) one motion to recommit with or without instructions.

Ms. SLAUGHTER. Mr. Speaker, I yield back the balance of my time.

Mr. LINDER. Mr. Speaker, I urge my colleagues to vote ''yes'' on the previous question. I yield back the balance of my time, and I move the previous question on the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Ms. SLAUGHTER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

Pursuant to clause 8 of rule XX, the Chair will reduce to 5 minutes the minimum time for electronic voting, if ordered, on the question of adoption of the resolution.

The vote was taken by electronic device, and there were—yeas 218, nays 201, not voting 15, as follows:

[Roll No. 186]

YEAS—218

Aderholt	Boozman	Cole
Akin	Bradley (NH)	Collins
Bachus	Brady (TX)	Crane
Baker	Brown (SC)	Crenshaw
Ballenger	Brown-Waite, Ginny	Cubin
Barrett (SC)	Burgess	Culberson
Bartlett (MD)	Burns	Cunningham
Barton (TX)	Burr	Davis, Jo Ann
Bass	Burton (IN)	Davis, Tom
Beauprez	Buyer	Deal (GA)
Bereuter	Calvert	DeLay
Biggert	Camp	DeMint
Bilirakis	Cannon	Diaz-Balart, L.
Bishop (UT)	Cantor	Diaz-Balart, M.
Blackburn	Capito	Doolittle
Blunt	Carter	Dreier
Boehlert	Castle	Duncan
Boehner	Chabot	Dunn
Bonilla	Chocola	Ehlers
Bonner	Coble	Emerson
Bono		English

Everett	King (NY)	Renzi
Feeney	Kingston	Reynolds
Ferguson	Kirk	Rogers (AL)
Flake	Kline	Rogers (KY)
Fletcher	Knollenberg	Rogers (MI)
Foley	Kolbe	Rohrabacher
Forbes	LaHood	Ros-Lehtinen
Fossella	Latham	Royce
Franks (AZ)	LaTourette	Ryan (WI)
Frelinghuysen	Leach	Ryun (KS)
Gallegly	Lewis (CA)	Saxton
Garrett (NJ)	Lewis (KY)	Sensenbrenner
Gerlach	Linder	Sessions
Gibbons	LoBiondo	Shadegg
Gilchrest	Lucas (OK)	Shaw
Gillmor	Manzullo	Shays
Gingrey	McCotter	Sherwood
Goode	McCrery	Shimkus
Goodlatte	McHugh	Shuster
Goss	McInnis	Simmons
Granger	McKeon	Simpson
Graves	Mica	Smith (MI)
Green (WI)	Miller (FL)	Smith (NJ)
Greenwood	Miller (MI)	Smith (TX)
Gutknecht	Moran (KS)	Souder
Harris	Murphy	Stearns
Hart	Musgrave	Sullivan
Hastings (WA)	Myrick	Sweeney
Hayes	Nethercutt	Tancredo
Hayworth	Ney	Tauzin
Hefley	Northup	Taylor (NC)
Hensarling	Norwood	Terry
Herger	Nunes	Thomas
Hobson	Nussle	Thornberry
Hoekstra	Osborne	Tiahrt
Hostettler	Ose	Tiberi
Houghton	Otter	Toomey
Hulshof	Paul	Turner (OH)
Hunter	Pearce	Upton
Hyde	Pence	Vitter
Isakson	Pickering	Walden (OR)
Issa	Pitts	Walsh
Janklow	Platts	Wamp
Jenkins	Pombo	Weldon (FL)
Johnson (CT)	Porter	Weldon (PA)
Johnson (IL)	Portman	Weller
Johnson, Sam	Pryce (OH)	Whitfield
Jones (NC)	Putnam	Wicker
Keller	Quinn	Wilson (NM)
Kelly	Ramstad	Wilson (SC)
Kennedy (MN)	Regula	Wolf
King (IA)	Rehberg	Young (AK)

NAYS—201

Abercrombie	Delahunt	Kanjorski
Ackerman	DeLauro	Kaptur
Alexander	Deutsch	Kennedy (RI)
Allen	Dicks	Kildee
Andrews	Dingell	Kilpatrick
Baca	Doggett	Kind
Baird	Dooley (CA)	Kleczka
Baldwin	Edwards	Kucinich
Ballance	Emanuel	Lampson
Becerra	Engel	Langevin
Bell	Eshoo	Lantos
Berkley	Etheridge	Larsen (WA)
Berman	Evans	Larson (CT)
Berry	Farr	Lee
Bishop (GA)	Filner	Levin
Bishop (NY)	Ford	Lewis (GA)
Blumenauer	Frank (MA)	Lipinski
Boswell	Frost	Lofgren
Boucher	Gephardt	Lowey
Boyd	Gonzalez	Lucas (KY)
Brady (PA)	Gordon	Lynch
Brown (OH)	Green (TX)	Majette
Brown, Corrine	Grijalva	Maloney
Capps	Gutierrez	Markey
Capuano	Hall	Marshall
Cardin	Harman	Matheson
Cardoza	Hastings (FL)	Matsui
Carson (IN)	Hill	McCarthy (MO)
Carson (OK)	Hinchey	McCarthy (NY)
Case	Hinojosa	McCollum
Clay	Hoeffel	McDermott
Clyburn	Holden	McIntyre
Conyers	Holt	McNulty
Cooper	Honda	Meehan
Costello	Hooley (OR)	Meek (FL)
Cramer	Hoyer	Meeks (NY)
Crowley	Inslee	Menendez
Cummings	Israel	Michaud
Davis (AL)	Jackson (IL)	Millender-McDonald
Davis (CA)	Jackson-Lee (TX)	Miller (NC)
Davis (FL)	Jefferson	Miller, George
Davis (IL)	John	Mollohan
Davis (TN)	Johnson, E. B.	Moore
DeFazio	Jones (OH)	Moran (VA)
DeGette	Kanjorski	
Delahunt	Kaptur	
DeLauro	Kennedy (RI)	
Deutsch	Kildee	
Dicks	Kilpatrick	
Dingell	Kind	
Doggett	Kleczka	
Dooley (CA)	Kucinich	
Edwards	Lampson	
Emanuel	Langevin	
Engel	Lantos	
Eshoo	Larsen (WA)	
Etheridge	Larson (CT)	
Evans	Lee	
Farr	Levin	
Filner	Lewis (GA)	
Ford	Lipinski	
Frank (MA)	Lofgren	
Frost	Lowey	
Gephardt	Lucas (KY)	
Gonzalez	Lynch	
Gordon	Majette	
Green (TX)	Maloney	
Grijalva	Markey	
Gutierrez	Marshall	
Hall	Matheson	
Harman	Matsui	
Hastings (FL)	McCarthy (MO)	
Hill	McCarthy (NY)	
Hinchey	McCollum	
Hinojosa	McDermott	
Hoeffel	McIntyre	
Holden	McNulty	
Holt	Meehan	
Honda	Meek (FL)	
Hooley (OR)	Meeks (NY)	
Hoyer	Menendez	
Inslee	Michaud	
Israel	Millender-McDonald	
Jackson (IL)	Miller (NC)	
Jackson-Lee (TX)	Miller, George	
Jefferson	Mollohan	
John	Moore	
Johnson, E. B.	Moran (VA)	
Jones (OH)	Murtha	
Kanjorski	Nadler	
Kaptur	Napolitano	
Kennedy (RI)	Neal (MA)	
Kildee	Oberstar	
Kilpatrick	Obey	
Kind	Olver	
Kleczka	Ortiz	
Kucinich	Owens	
Lampson	Pallone	
Langevin	Pascrell	
Lantos	Pastor	
Larsen (WA)	Payne	
Larson (CT)	Pelosi	
Lee	Peterson (MN)	
Levin	Pomeroy	
Lewis (GA)	Price (NC)	
Lipinski	Rahall	
Lofgren	Rangel	
Lowey	Reyes	
Lucas (KY)	Rodriguez	
Lynch	Ross	
Majette	Roybal-Allard	
Maloney	Ruppersberger	
Markey	Rush	
Marshall	Ryan (OH)	
Matheson	Sabo	
Matsui	Sanchez, Linda T.	
McCarthy (MO)	Sanchez, Loretta	
McCarthy (NY)	Sanders	
McCollum	Sandlin	
McDermott	Schakowsky	
McIntyre	Schiff	
McNulty	Scott (GA)	
Meehan	Scott (VA)	
Meek (FL)	Serrano	
Meeks (NY)	Sherman	
Menendez	Skelton	
Michaud	Slaughter	
Millender-McDonald	Smith (WA)	
Miller (NC)	Snyder	
Miller, George	Solis	
Mollohan	Spratt	
Moore	Stark	
Moran (VA)	Stenholm	
Murtha	Strickland	
Nadler	Stupak	
Napolitano	Tanner	
Neal (MA)	Tauscher	
Oberstar	Taylor (MS)	
Obey	Thompson (CA)	
Olver	Thompson (MS)	
Ortiz	Tierney	
Owens	Towns	
Pallone	Udall (CO)	
Pascrell	Udall (NM)	
Pastor	Van Hollen	
Payne	Velazquez	
Pelosi	Visclosky	
Peterson (MN)	Waters	
Pomeroy	Watson	
Price (NC)	Watt	
Rahall	Waxman	
Rangel	Weiner	
Reyes	Wexler	
Rodriguez	Woolsey	
Ross	Wu	
Roybal-Allard	Wynn	

NOT VOTING—15

Combest	McGovern	Radanovich
Cox	Miller, Gary	Rothman
Doyle	Oxley	Schrock
Fattah	Peterson (PA)	Turner (TX)
Istook	Petri	Young (FL)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. SHIMKUS) (during the vote). Members are advised that 2 minutes remain in this vote.

□ 1257

Mr. BERRY and Mr. DAVIS of Tennessee changed their vote from ''yea'' to ''nay.''

Mrs. WILSON of New Mexico changed her vote from ''nay'' to ''yea.''

So the previous question was ordered.

The result of the vote was announced as above recorded.

Stated for:

Mr. PETRI. Mr. Speaker, on rollcall No. 186, had I been present, I would have voted ''yea.''

Stated against:

Mr. MCGOVERN. Mr. Speaker, on rollcall No. 186, had I been present, I would have voted ''nay.''

The SPEAKER pro tempore. The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Mr. BOEHNER. Mr. Speaker, pursuant to House Resolution 230, I call up the bill (H.R. 1000) to amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to provide additional protections to participants and beneficiaries in individual account plans from excessive investment in employer securities and to promote the provision of retirement investment advice to workers managing their retirement income assets, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 230, the bill is considered read for amendment.

The text of H.R. 1000 is as follows:

H.R. 1000

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Pension Security Act of 2003''.

(b) TABLE OF CONTENTS.—The table of contents is as follows:

TITLE I—IMPROVEMENTS IN PENSION SECURITY

SEC. 101. PERIODIC PENSION BENEFITS STATEMENTS.

(a) AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) REQUIREMENTS.—

(A) IN GENERAL.—Section 105(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1025(a)) is amended to read as follows:

''(a)(1)(A) The administrator of an individual account plan shall furnish a pension benefit statement—

''(i) to each plan participant at least annually,

''(ii) to each plan beneficiary upon written request, and

''(iii) in the case of an applicable individual account plan, to each individual who is a plan participant or beneficiary and who has a right to direct investments, at least quarterly.

''(B) The administrator of a defined benefit plan shall furnish a pension benefit statement—

''(i) at least once every 3 years to each participant with a nonforfeitable accrued benefit who is employed by the employer maintaining the plan at the time the statement is furnished to participants, and

''(ii) to a plan participant or plan beneficiary of the plan upon written request.

''(2) A pension benefit statement under paragraph (1)—

''(A) shall indicate, on the basis of the latest available information—

''(i) the total benefits accrued, and

''(ii) the nonforfeitable pension benefits, if any, which have accrued, or the earliest date on which benefits will become nonforfeitable,

''(B) shall be written in a manner calculated to be understood by the average plan participant, and

''(C) may be provided in written form or in electronic or other appropriate form to the extent that such form is reasonably accessible to the recipient.

''(3)(A) In the case of a defined benefit plan, the requirements of paragraph (1)(B)(i) shall be treated as met with respect to a participant if the administrator, at least once each year, provides the participant with notice, at the participant's last known address, of the availability of the pension benefit statement and the ways in which the participant may obtain such statement. Such notice shall be provided in written, electronic, or other appropriate form, and may be included with other communications to the participant if done in a manner reasonably designed to attract the attention of the participant.

''(B) The Secretary may provide that years in which no employee or former employee benefits (within the meaning of section 410(b) of the Internal Revenue Code of 1986) under the plan need not be taken into account in determining the 3-year period under paragraph (1)(B)(i).''.

(B) CONFORMING AMENDMENTS.—

(i) Section 105 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1025) is amended by striking subsection (d).

(ii) Section 105(b) of such Act (29 U.S.C. 1025(b)) is amended to read as follows:

''(b) In no case shall a participant or beneficiary of a plan be entitled to more than one statement described in clause (i) or (ii) of subsection (a)(1)(A) or clause (i) or (ii) of subsection (a)(1)(B), whichever is applicable, in any 12-month period. If such report is required under subsection (a) to be furnished at least quarterly, the requirements of the preceding sentence shall be applied with respect to each quarter in lieu of the 12-month period.''.

(2) INFORMATION REQUIRED FROM APPLICABLE INDIVIDUAL ACCOUNT PLANS.—Section 105 of such Act (as amended by paragraph (1)) is amended further by adding at the end the following new subsection:

''(d)(1) The statements required to be provided at least quarterly under subsection (a)(1)(A)(iii) in the case of applicable individual account plans shall include (together with the information required in subsection (a)) the following:

''(A) the value of each investment to which assets in the individual account have been allocated, determined as of the most recent valuation date under the plan, including the value of any assets held in the form of employer securities, without regard to whether such securities were contributed by the plan sponsor or acquired at the direction of the plan or of the participant or beneficiary,

''(B) an explanation, written in a manner calculated to be understood by the average plan participant, of any limitations or restrictions on the right of the participant or beneficiary to direct an investment, and

''(C) an explanation, written in a manner calculated to be understood by the average plan participant, of the importance, for the long-term retirement security of participants and beneficiaries, of a well-balanced and diversified investment portfolio, including a discussion of the risk of holding more than 25 percent of a portfolio in the security of any one entity, such as employer securities.

''(2) The Secretary shall issue guidance and model notices which meet the requirements of this subsection.''.

(3) DEFINITION OF APPLICABLE INDIVIDUAL ACCOUNT PLAN.—Section 3 of such Act (29 U.S.C. 1002) is amended by adding at the end the following new paragraph:

''(42)(A) The term 'applicable individual account plan' means any individual account plan, except that such term does not include an employee stock ownership plan (within the meaning of section 4975(e)(7) of the Internal Revenue Code of 1986) unless there are any contributions to such plan (or earnings thereunder) held within such plan that are subject to subsection (k)(3) or (m)(2) of section 401 of the Internal Revenue Code of 1986. Such term shall not include a one-participant retirement plan.

''(B) The term 'one-participant retirement plan' means a pension plan with respect to which the following requirements are met:

''(i) on the first day of the plan year—

''(I) the plan covered only one individual (or the individual and the individual's spouse) and the individual owned 100 percent of the plan sponsor (whether or not incorporated), or

''(II) the plan covered only one or more partners (or partners and their spouses) in the plan sponsor;

''(ii) the plan meets the minimum coverage requirements of 410(b) of the Internal Revenue Code of 1986 (as in effect on the date of the enactment of this paragraph) without being combined with any other plan of the business that covers the employees of the business;

''(iii) the plan does not provide benefits to anyone except the individual (and the individual's spouse) or the partners (and their spouses);

''(iv) the plan does not cover a business that is a member of an affiliated service group, a controlled group of corporations, or a group of businesses under common control; and

''(v) the plan does not cover a business that leases employees.''.

(4) CIVIL PENALTIES FOR FAILURE TO PROVIDE QUARTERLY BENEFIT STATEMENTS.—Section 502 of such Act (29 U.S.C. 1132) is amended—

(A) in subsection (a)(6), by striking ''(6), or (7)'' and inserting ''(6), (7), or (8)'';

(B) by redesignating paragraph (8) of subsection (c) as paragraph (9); and

(C) by inserting after paragraph (7) of subsection (c) the following new paragraph:

''(8) The Secretary may assess a civil penalty against any plan administrator of up to $1,000 a day from the date of such plan administrator's failure or refusal to provide participants or beneficiaries with a benefit statement on at least a quarterly basis in accordance with section 105(a)(1)(A)(iii).''.

(5) MODEL STATEMENTS.—The Secretary of Labor shall, not later than 180 days after the date of the enactment of this Act, issue initial guidance and a model benefit statement, written in a manner calculated to be understood by the average plan participant, that may be used by plan administrators in complying with the requirements of section 105 of the Employee Retirement Income Security Act of 1974. Not later than 75 days after the date of the enactment of this Act, the Secretary shall promulgate interim final rules necessary to carry out the amendments made by this subsection.

(b) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—

(1) PROVISION OF INVESTMENT EDUCATION NOTICES TO PARTICIPANTS IN CERTAIN PLANS.—Section 414 of the Internal Revenue Code of 1986 (relating to definitions and special rules) is amended by adding at the end the following:

''(w) PROVISION OF INVESTMENT EDUCATION NOTICES TO PARTICIPANTS IN CERTAIN PLANS.—

''(1) IN GENERAL.—The plan administrator of an applicable pension plan shall provide to each applicable individual an investment education notice described in paragraph (2) at the time of the enrollment of the applicable individual in the plan and not less often than annually thereafter.

''(2) INVESTMENT EDUCATION NOTICE.—An investment education notice is described in this paragraph if such notice contains—

''(A) an explanation, for the long-term retirement security of participants and beneficiaries, of generally accepted investment principles, including principles of risk management and diversification, and

''(B) a discussion of the risk of holding substantial portions of a portfolio in the security of any one entity, such as employer securities.

''(3) UNDERSTANDABILITY.—Each notice required by paragraph (1) shall be written in a manner calculated to be understood by the average plan participant and shall provide sufficient information (as determined in accordance with guidance provided by the Secretary) to allow recipients to understand such notice.

''(4) FORM AND MANNER OF NOTICES.—The notices required by this subsection shall be in writing, except that such notices may be in electronic or other form (or electronically posted on the plan's website) to the extent that such form is reasonably accessible to the applicable individual.

''(5) DEFINITIONS.—For purposes of this subsection—

''(A) APPLICABLE INDIVIDUAL.—The term 'applicable individual' means—

''(i) any participant in the applicable pension plan,

''(ii) any beneficiary who is an alternate payee (within the meaning of section 414(p)(8)) under a qualified domestic relations order (within the meaning of section 414(p)(1)(A)), and

''(iii) any beneficiary of a deceased participant or alternate payee.

''(B) APPLICABLE PENSION PLAN.—The term 'applicable pension plan' means—

''(i) a plan described in clause (i), (ii), or (iv) of section 219(g)(5)(A), and

''(ii) an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A),

which permits any participant to direct the investment of some or all of his account in the plan or under which the accrued benefit of any participant depends in whole or in part on hypothetical investments directed by the participant. Such term shall not include a one-participant retirement plan or a plan to which section 105 of the Employee Retirement Income Security Act of 1974 applies.

''(C) ONE-PARTICIPANT RETIREMENT PLAN DEFINED.—The term 'one-participant retirement plan' means a retirement plan with respect to which the following requirements are met:

''(i) on the first day of the plan year—

''(I) the plan covered only one individual (or the individual and the individual's spouse) and the individual owned 100 percent of the plan sponsor (whether or not incorporated), or

''(II) the plan covered only one or more partners (or partners and their spouses) in the plan sponsor;

''(ii) the plan meets the minimum coverage requirements of 410(b) without being combined with any other plan of the business that covers the employees of the business;

''(iii) the plan does not provide benefits to anyone except the individual (and the individual's spouse) or the partners (and their spouses);

''(iv) the plan does not cover a business that is a member of an affiliated service group, a controlled group of corporations, or a group of businesses under common control; and

''(v) the plan does not cover a business that leases employees.

''(6) CROSS REFERENCE.—

''For provisions relating to penalty for failure to provide the notice required by this section, see section 6652(m).''.

(2) PENALTY FOR FAILURE TO PROVIDE NOTICE.—Section 6652 of such Code (relating to failure to file certain information returns, registration statements, etc.) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

''(m) FAILURE TO PROVIDE INVESTMENT EDUCATION NOTICES TO PARTICIPANTS IN CERTAIN PLANS.—In the case of each failure to provide a written explanation as required by section 414(w) with respect to an applicable individual (as defined in such section), at the time prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid, on notice and demand of the Secretary and in the same manner as tax, by the person failing to provide such notice, an amount equal to $100 for each such failure, but the total amount imposed on such person for all such failures during any calendar year shall not exceed $50,000.''.

SEC. 102. INAPPLICABILITY OF RELIEF FROM FIDUCIARY LIABILITY DURING BLACKOUT PERIODS.

(a) IN GENERAL.—Section 404(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(c)) is amended by adding at the end the following new paragraph:

''(4)(A) Paragraph (1)(B) shall not apply in connection with the direction or diversification of assets credited to the account of any participant or beneficiary during a blackout period if, by reason of the imposition of such blackout period, the ability of such participant or beneficiary to direct or diversify such assets is suspended, limited, or restricted.

''(B) If a fiduciary authorizing a blackout period meets the requirements of this title in connection with authorizing such blackout period, such fiduciary shall not be liable under this title for any loss occurring during the blackout period as a result of any exercise by the participant or beneficiary of control over assets in his or her account prior to the blackout period. Matters to be considered in determining whether such fiduciary has met the requirements of this title include whether such fiduciary—

''(i) has considered the reasonableness of the expected length of the blackout period,

''(ii) has provided the notice required under section 101(i)(2), and

''(iii) has acted in accordance with the requirements of subsection (a) in determining whether to enter into the blackout period.

''(C) If a blackout period arises in connection with a change in the investment options offered under the plan, a participant or beneficiary shall be deemed to have exercised control over the assets in his or her account prior to the blackout period, if, after reasonable notice of the change in investment options is given to such participant or beneficiary before such blackout period, assets in the account of the participant or beneficiary are transferred—

''(i) to plan investment options in accordance with the affirmative election of the participant or beneficiary, or

''(ii) in any case in which there is no such election, in the manner set forth in such notice.

''(D) Any imposition of any limitation or restriction that may govern the frequency of transfers between investment vehicles shall not be treated as the imposition of a blackout period to the extent such limitation or restriction is disclosed to participants or beneficiaries through the summary plan description or materials describing specific investment alternatives under the plan.

''(E) For purposes of this paragraph, the term 'blackout period' has the meaning given such term by section 101(i)(7).''.

(b) GUIDANCE.—The Secretary of Labor shall, on or before December 31, 2004, issue interim final regulations providing guidance on how plan sponsors or any other affected fiduciaries can satisfy their fiduciary responsibilities during any blackout period during which the ability of a participant or beneficiary to direct the investment of assets in his or her individual account is suspended.

SEC. 103. INFORMATIONAL AND EDUCATIONAL SUPPORT FOR PENSION PLAN FIDUCIARIES.

Section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104) is amended by adding at the end the following new subsection:

''(e) The Secretary shall establish a program under which information and educational resources shall be made available on an ongoing basis to persons serving as fiduciaries under employee pension benefit plans so as to assist such persons in diligently and effectively carrying out their fiduciary duties in accordance with this part. Such program shall provide information concerning the practices that define prudent investment procedures for plan fiduciaries. Information provided under the program shall address the relevant investment considerations for defined benefit and defined contribution plans, including investment in employer securities by such plans. In developing such program, the Secretary shall solicit information from the public, including investment education professionals.''.

SEC. 104. DIVERSIFICATION REQUIREMENTS FOR DEFINED CONTRIBUTION PLANS THAT HOLD EMPLOYER SECURITIES.

(a) AMENDMENT TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Section 204 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054) is amended—

(1) by redesignating subsection (j) as subsection (k); and

(2) by inserting after subsection (i) the following new subsection:

''(j) DIVERSIFICATION REQUIREMENTS FOR INDIVIDUAL ACCOUNT PLANS THAT HOLD EMPLOYER SECURITIES.—

''(1) IN GENERAL.—An applicable individual account plan shall meet the requirements of paragraphs (2) and (3).

''(2) EMPLOYEE CONTRIBUTIONS AND ELECTIVE DEFERRALS INVESTED IN EMPLOYER SECURITIES.—In the case of the portion of the account attributable to employee contributions and elective deferrals which is invested in employer securities, a plan meets the requirements of this paragraph if each applicable individual may elect to direct the plan to divest any such securities in the individual's account and to reinvest an equivalent amount in other investment options which meet the requirements of paragraph (4).

''(3) EMPLOYER CONTRIBUTIONS INVESTED IN EMPLOYER SECURITIES.—

''(A) IN GENERAL.—In the case of the portion of the account attributable to employer contributions (other than elective deferrals to which paragraph (2) applies) which is invested in employer securities, a plan meets the requirements of this paragraph if, under the plan—

''(i) each applicable individual with a benefit based on 3 years of service may elect to direct the plan to divest any such securities in the individual's account and to reinvest an equivalent amount in other investment options which meet the requirements of paragraph (4), or

''(ii) with respect to any employer security allocated to an applicable individual's account during any plan year, such applicable individual may elect to direct the plan to divest such employer security after a date which is not later than 3 years after the end of such plan year and to reinvest an equivalent amount in other investment options which meet the requirements of paragraph (4).

''(B) APPLICABLE INDIVIDUAL WITH BENEFIT BASED ON 3 YEARS OF SERVICE.—For purposes of subparagraph (A), an applicable individual has a benefit based on 3 years of service if such individual would be an applicable individual if only participants in the plan who have completed at least 3 years of service (as determined under section 203(b)) were referred to in paragraph (5)(B)(i).

''(4) INVESTMENT OPTIONS.—The requirements of this paragraph are met if—

''(A) the plan offers not less than 3 investment options, other than employer securities, to which an applicable individual may direct the proceeds from the divestment of employer securities pursuant to this subsection, each of which is diversified and has materially different risk and return characteristics, and

''(B) the plan permits the applicable individual to choose from any of the investment options made available under the plan to which such proceeds may be so directed, subject to such restrictions as may be provided by the plan limiting such choice to periodic, reasonable opportunities occurring no less frequently than on a quarterly basis.

''(5) DEFINITIONS AND RULES.—For purposes of this subsection—

''(A) APPLICABLE INDIVIDUAL ACCOUNT PLAN.—The term 'applicable individual account plan' means any individual account plan, except that such term does not include an employee stock ownership plan (within the meaning of section 4975(e)(7) of the Internal Revenue Code of 1986) unless there are any contributions to such plan (or earnings thereon) held within such plan that are subject to subsection (k)(3) or (m)(2) of section 401 of the Internal Revenue Code of 1986.

''(B) APPLICABLE INDIVIDUAL.—The term 'applicable individual' means—

''(i) any participant in the plan, and

''(ii) any beneficiary of a participant referred to in clause (i) who has an account under the plan with respect to which the beneficiary is entitled to exercise the rights of the participant.

''(C) ELECTIVE DEFERRAL.—The term 'elective deferral' means an employer contribution described in section 402(g)(3)(A) of the Internal Revenue Code of 1986 (as in effect on the date of the enactment of this subsection).

''(D) EMPLOYER SECURITY.—The term 'employer security' shall have the meaning given such term by section 407(d)(1) of this Act (as in effect on the date of the enactment of this subsection).

''(E) EMPLOYEE STOCK OWNERSHIP PLAN.—The term 'employee stock ownership plan' shall have the same meaning given to such term by section 4975(e)(7) of the Internal

Revenue Code of 1986 (as in effect on the date of the enactment of this subsection).

''(F) ELECTIONS.—Elections under this subsection may be made not less frequently than quarterly.

''(6) EXCEPTION WHERE THERE IS NO READILY TRADABLE STOCK.—This subsection shall not apply if there is no class of stock issued by the employer (or by a corporation which is an affiliate of the employer (as defined in section 407(d)(7))) that is readily tradable on an established securities market (or in such other circumstances as may be determined jointly by the Secretary of Labor and the Secretary of the Treasury in regulations).

''(7) TRANSITION RULE.—

''(A) IN GENERAL.—In the case of any individual account plan which, on the first day of the first plan year to which this subsection applies, holds employer securities of any class that were acquired before such date and on which there is a restriction on diversification otherwise precluded by this subsection, this subsection shall apply to such securities of such class held in any plan year only with respect to the number of such securities equal to the applicable percentage of the total number of such securities of such class held on such date.

''(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be as follows:

''Plan years for which provisions are effective:	**Applicable percentage:**
1st plan year	20 percent
2nd plan year	40 percent
3rd plan year	60 percent
4th plan year	80 percent
5th plan year or thereafter	100 percent.

''(C) ELECTIVE DEFERRALS TREATED AS SEPARATE PLAN NOT INDIVIDUAL ACCOUNT PLAN.—For purposes of subparagraph (A), the applicable percentage shall be 100 percent with respect to—

''(i) employee contributions to a plan under which any portion attributable to elective deferrals is treated as a separate plan under section 407(b)(2) as of the date of the enactment of this paragraph, and

''(ii) such elective deferrals.

''(D) COORDINATION WITH PRIOR ELECTIONS.—In any case in which a divestiture of investment in employer securities of any class held by an employee stock ownership plan prior to the effective date of this subsection was undertaken pursuant to other applicable Federal law prior to such date, the applicable percentage (as determined without regard to this subparagraph) in connection with such securities shall be reduced to the extent necessary to account for the amount to which such election applied.

''(8) REGULATIONS.—The Secretary of the Treasury shall prescribe regulations under this subsection in consultation with the Secretary of Labor.''.

(b) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—

(1) IN GENERAL.—Section 401(a) of the Internal Revenue Code of 1986 (relating to requirements for qualification) is amended by inserting after paragraph (34) the following new paragraph:

''(35) DIVERSIFICATION REQUIREMENTS FOR DEFINED CONTRIBUTION PLANS THAT HOLD EMPLOYER SECURITIES.—

''(A) IN GENERAL.—An applicable defined contribution plan shall meet the requirements of subparagraphs (B) and (C).

''(B) EMPLOYEE CONTRIBUTIONS AND ELECTIVE DEFERRALS INVESTED IN EMPLOYER SECURITIES.—In the case of the portion of the account attributable to employee contributions and elective deferrals which is invested in employer securities, a plan meets the requirements of this subparagraph if each applicable individual in such plan may elect to direct the plan to divest any such securities in the individual's account and to reinvest an equivalent amount in other investment options which meet the requirements of subparagraph (D).

''(C) EMPLOYER CONTRIBUTIONS INVESTED IN EMPLOYER SECURITIES.—

''(i) IN GENERAL.—In the case of the portion of the account attributable to employer contributions (other than elective deferrals to which subparagraph (B) applies) which is invested in employer securities, a plan meets the requirements of this subparagraph if, under the plan—

''(I) each applicable individual with a benefit based on 3 years of service may elect to direct the plan to divest any such securities in the individual's account and to reinvest an equivalent amount in other investment options which meet the requirements of subparagraph (D), or

''(II) with respect to any employer security allocated to an applicable individual's account during any plan year, such applicable individual may elect to direct the plan to divest such employer security after a date which is not later than 3 years after the end of such plan year and to reinvest an equivalent amount in other investment options which meet the requirements of subparagraph (D).

''(ii) APPLICABLE INDIVIDUAL WITH BENEFIT BASED ON 3 YEARS OF SERVICE.—For purposes of clause (i), an applicable individual has a benefit based on 3 years of service if such individual would be an applicable individual if only participants in the plan who have completed at least 3 years of service (as determined under section 411(a)) were referred to in subparagraph (E)(ii)(I).

''(D) INVESTMENT OPTIONS.—The requirements of this subparagraph are met if—

''(i) the plan offers not less than 3 investment options, other than employer securities, to which an applicable individual may direct the proceeds from the divestment of employer securities pursuant to this paragraph, each of which is diversified and has materially different risk and return characteristics, and

''(ii) the plan permits the applicable individual to choose from any of the investment options made available under the plan to which such proceeds may be so directed, subject to such restrictions as may be provided by the plan limiting such choice to periodic, reasonable opportunities occurring no less frequently than on a quarterly basis.

''(E) DEFINITIONS AND RULES.—For purposes of this paragraph—

''(i) APPLICABLE DEFINED CONTRIBUTION PLAN.—The term 'applicable defined contribution plan' means any defined contribution plan, except that such term does not include an employee stock ownership plan (within the meaning of section 4975(e)(7)) unless there are any contributions to such plan (or earnings thereon) held within such plan that are subject to subsection (k)(3) or (m)(2).

''(ii) APPLICABLE INDIVIDUAL.—The term 'applicable individual' means—

''(I) any participant in the plan, and

''(II) any beneficiary of a participant referred to in clause (i) who has an account under the plan with respect to which the beneficiary is entitled to exercise the rights of the participant.

''(iii) ELECTIVE DEFERRAL.—The term 'elective deferral' means an employer contribution described in section 402(g)(3)(A) (as in effect on the date of the enactment of this paragraph).

''(iv) EMPLOYER SECURITY.—The term 'employer security' shall have the meaning given such term by section 407(d)(1) of the Employee Retirement Income Security Act of 1974 (as in effect on the date of the enactment of this paragraph).

''(v) EMPLOYEE STOCK OWNERSHIP PLAN.—The term 'employee stock ownership plan' shall have the same meaning given to such term by section 4975(e)(7) of the Internal Revenue Code of 1986 (as in effect on the date of the enactment of this paragraph).

''(vi) ELECTIONS.—Elections under this paragraph may be made not less frequently than quarterly.

''(F) EXCEPTION WHERE THERE IS NO READILY TRADABLE STOCK.—This paragraph shall not apply if there is no class of stock issued by the employer that is readily tradable on an established securities market (or in such other circumstances as may be determined jointly by the Secretary of the Treasury and the Secretary of Labor in regulations).

''(G) TRANSITION RULE.—

''(i) IN GENERAL.—In the case of any defined contribution plan which, on the effective date of this subsection, holds employer securities of any class that were acquired before such date and on which there is a restriction on diversification otherwise precluded by this paragraph, this paragraph shall apply to such securities of such class held in any plan year only with respect to the number of such securities equal to the applicable percentage of the total number of such securities of such class held on such date.

''(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage shall be as follows:

''Plan years for which provisions are effective:	**Applicable percentage:**
1st plan year	20 percent.
2nd plan year	40 percent.
3rd plan year	60 percent.
4th plan year	80 percent.
5th plan year or thereafter	100 percent.

''(iii) ELECTIVE DEFERRALS TREATED AS SEPARATE PLAN NOT INDIVIDUAL ACCOUNT PLAN.—For purposes of clause (i), the applicable percentage shall be 100 percent with respect to—

''(I) employee contributions to a plan under which any portion attributable to elective deferrals is treated as a separate plan under section 407(b)(2) of the Employee Retirement Income Security Act of 1974 as of the date of the enactment of this paragraph, and

''(II) such elective deferrals.

''(iv) CONTRIBUTIONS HELD WITHIN AN ESOP.—In the case of contributions (other than elective deferrals and employee contributions) held within an employee stock ownership plan, in the case of the 1st and 2nd plan years referred to in the table in clause (ii), the applicable percentage shall be the greater of the amount determined under clause (ii) or the percentage determined under paragraph (28) (determined as if paragraph (28) applied to a plan described in this paragraph).

''(v) COORDINATION WITH PRIOR ELECTIONS UNDER PARAGRAPH (28).—In any case in which a divestiture of investment in employer securities of any class held by an employee stock ownership plan prior to the effective date of this paragraph was undertaken pursuant to an election under paragraph (28) prior to such date, the applicable percentage (as determined without regard to this clause) in connection with such securities shall be reduced to the extent necessary to account for the amount to which such election applied.

''(H) REGULATIONS.—The Secretary shall prescribe regulations under this paragraph in consultation with the Secretary of Labor.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 401(a)(28) of such Code is amended by adding at the end the following new subparagraph:

''(D) APPLICATION.—This paragraph shall not apply to a plan to which paragraph (35) applies.''.

(B) Section 409(h)(7) of such Code is amended by inserting before the period at the end ''or subparagraph (B) or (C) of section 401(a)(35)''.

(C) Section 4980(c)(3)(A) of such Code is amended by striking ''if—'' and all that follows and inserting ''if the requirements of subparagraphs (B), (C), and (D) are met.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2) and section 108, the amendments made by this section shall apply to plan years beginning after December 31, 2003, and with respect to employer securities allocated to accounts before, on, or after the date of the enactment of this Act.

(2) EXCEPTION.—The amendments made by this section shall not apply to employer securities held by an employee stock ownership plan which are acquired before January 1, 1987.

SEC. 105. PROHIBITED TRANSACTION EXEMPTION FOR THE PROVISION OF INVESTMENT ADVICE.

(a) AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) EXEMPTION FROM PROHIBITED TRANSACTIONS.—Section 408(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)) is amended by adding at the end the following new paragraph:

''(14)(A) Any transaction described in subparagraph (B) in connection with the provision of investment advice described in section 3(21)(A)(ii), in any case in which—

''(i) the investment of assets of the plan is subject to the direction of plan participants or beneficiaries,

''(ii) the advice is provided to the plan or a participant or beneficiary of the plan by a fiduciary adviser in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of plan assets, and

''(iii) the requirements of subsection (g) are met in connection with the provision of the advice.

''(B) The transactions described in this subparagraph are the following:

''(i) the provision of the advice to the plan, participant, or beneficiary;

''(ii) the sale, acquisition, or holding of a security or other property (including any lending of money or other extension of credit associated with the sale, acquisition, or holding of a security or other property) pursuant to the advice; and

''(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of the advice or in connection with a sale, acquisition, or holding of a security or other property pursuant to the advice.''.

(2) REQUIREMENTS.—Section 408 of such Act is amended further by adding at the end the following new subsection:

''(g) REQUIREMENTS RELATING TO PROVISION OF INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—

''(1) IN GENERAL.—The requirements of this subsection are met in connection with the provision of investment advice referred to in section 3(21)(A)(ii), provided to an employee benefit plan or a participant or beneficiary of an employee benefit plan by a fiduciary adviser with respect to the plan in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of amounts held by the plan, if—

''(A) in the case of the initial provision of the advice with regard to the security or other property by the fiduciary adviser to the plan, participant, or beneficiary, the fiduciary adviser provides to the recipient of the advice, at a time reasonably contemporaneous with the initial provision of the advice, a written notification (which may consist of notification by means of electronic communication)—

''(i) of all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property,

''(ii) of any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property,

''(iii) of any limitation placed on the scope of the investment advice to be provided by the fiduciary adviser with respect to any such sale, acquisition, or holding of a security or other property,

''(iv) of the types of services provided by the fiduciary adviser in connection with the provision of investment advice by the fiduciary adviser,

''(v) that the adviser is acting as a fiduciary of the plan in connection with the provision of the advice, and

''(vi) that a recipient of the advice may separately arrange for the provision of advice by another adviser, that could have no material affiliation with and receive no fees or other compensation in connection with the security or other property,

''(B) the fiduciary adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws,

''(C) the sale, acquisition, or holding occurs solely at the direction of the recipient of the advice,

''(D) the compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property is reasonable, and

''(E) the terms of the sale, acquisition, or holding of the security or other property are at least as favorable to the plan as an arm's length transaction would be.

''(2) STANDARDS FOR PRESENTATION OF INFORMATION.—

''(A) IN GENERAL.—The notification required to be provided to participants and beneficiaries under paragraph (1)(A) shall be written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

''(B) MODEL FORM FOR DISCLOSURE OF FEES AND OTHER COMPENSATION.—The Secretary shall issue a model form for the disclosure of fees and other compensation required in paragraph (1)(A)(i) which meets the requirements of subparagraph (A).

''(3) EXEMPTION CONDITIONED ON MAKING REQUIRED INFORMATION AVAILABLE ANNUALLY, ON REQUEST, AND IN THE EVENT OF MATERIAL CHANGE.—The requirements of paragraph (1)(A) shall be deemed not to have been met in connection with the initial or any subsequent provision of advice described in paragraph (1) to the plan, participant, or beneficiary if, at any time during the provision of advisory services to the plan, participant, or beneficiary, the fiduciary adviser fails to maintain the information described in clauses (i) through (iv) of subparagraph (A) in currently accurate form and in the manner described in paragraph (2) or fails—

''(A) to provide, without charge, such currently accurate information to the recipient of the advice no less than annually,

''(B) to make such currently accurate information available, upon request and without charge, to the recipient of the advice, or

''(C) in the event of a material change to the information described in clauses (i) through (iv) of paragraph (1)(A), to provide, without charge, such currently accurate information to the recipient of the advice at a time reasonably contemporaneous to the material change in information.

''(4) MAINTENANCE FOR 6 YEARS OF EVIDENCE OF COMPLIANCE.—A fiduciary adviser referred to in paragraph (1) who has provided advice referred to in such paragraph shall, for a period of not less than 6 years after the provision of the advice, maintain any records necessary for determining whether the requirements of the preceding provisions of this subsection and of subsection (b)(14) have been met. A transaction prohibited under section 406 shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

''(5) EXEMPTION FOR PLAN SPONSOR AND CERTAIN OTHER FIDUCIARIES.—

''(A) IN GENERAL.—Subject to subparagraph (B), a plan sponsor or other person who is a fiduciary (other than a fiduciary adviser) shall not be treated as failing to meet the requirements of this part solely by reason of the provision of investment advice referred to in section 3(21)(A)(ii) (or solely by reason of contracting for or otherwise arranging for the provision of the advice), if—

''(i) the advice is provided by a fiduciary adviser pursuant to an arrangement between the plan sponsor or other fiduciary and the fiduciary adviser for the provision by the fiduciary adviser of investment advice referred to in such section,

''(ii) the terms of the arrangement require compliance by the fiduciary adviser with the requirements of this subsection, and

''(iii) the terms of the arrangement include a written acknowledgment by the fiduciary adviser that the fiduciary adviser is a fiduciary of the plan with respect to the provision of the advice.

''(B) CONTINUED DUTY OF PRUDENT SELECTION OF ADVISER AND PERIODIC REVIEW.—Nothing in subparagraph (A) shall be construed to exempt a plan sponsor or other person who is a fiduciary from any requirement of this part for the prudent selection and periodic review of a fiduciary adviser with whom the plan sponsor or other person enters into an arrangement for the provision of advice referred to in section 3(21)(A)(ii). The plan sponsor or other person who is a fiduciary has no duty under this part to monitor the specific investment advice given by the fiduciary adviser to any particular recipient of the advice.

''(C) AVAILABILITY OF PLAN ASSETS FOR PAYMENT FOR ADVICE.—Nothing in this part shall be construed to preclude the use of plan assets to pay for reasonable expenses in providing investment advice referred to in section 3(21)(A)(ii).

''(6) DEFINITIONS.—For purposes of this subsection and subsection (b)(14)—

''(A) FIDUCIARY ADVISER.—The term 'fiduciary adviser' means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice by the person to the plan or to a participant or beneficiary and who is—

''(i) registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or under the laws of the State in which the fiduciary maintains its principal office and place of business,

''(ii) a bank or similar financial institution referred to in section 408(b)(4) or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1))), but only if the advice is provided through a trust department of the bank or similar financial institution or savings association which is subject to periodic examination and review by Federal or State banking authorities,

''(iii) an insurance company qualified to do business under the laws of a State,

''(iv) a person registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

''(v) an affiliate of a person described in any of clauses (i) through (iv), or

''(vi) an employee, agent, or registered representative of a person described in any of clauses (i) through (v) who satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of the advice.

''(B) AFFILIATE.—The term 'affiliate' of another entity means an affiliated person of the entity (as defined in section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3))).

''(C) REGISTERED REPRESENTATIVE.—The term 'registered representative' of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)) (substituting the entity for the investment adviser referred to in such section).''.

(b) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—

(1) EXEMPTION FROM PROHIBITED TRANSACTIONS.—Subsection (d) of section 4975 of the Internal Revenue Code of 1986 (relating to exemptions from tax on prohibited transactions) is amended—

(A) in paragraph (14), by striking ''or'' at the end;

(B) in paragraph (15), by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following new paragraph:

''(16) any transaction described in subsection (f)(7)(A) in connection with the provision of investment advice described in subsection (e)(3)(B)(i), in any case in which—

''(A) the investment of assets of the plan is subject to the direction of plan participants or beneficiaries,

''(B) the advice is provided to the plan or a participant or beneficiary of the plan by a fiduciary adviser in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of plan assets, and

''(C) the requirements of subsection (f)(7)(B) are met in connection with the provision of the advice.''.

(2) ALLOWED TRANSACTIONS AND REQUIREMENTS.—Subsection (f) of such section 4975 (relating to other definitions and special rules) is amended by adding at the end the following new paragraph:

''(7) PROVISIONS RELATING TO INVESTMENT ADVICE PROVIDED BY FIDUCIARY ADVISERS.—

''(A) TRANSACTIONS ALLOWABLE IN CONNECTION WITH INVESTMENT ADVICE PROVIDED BY FIDUCIARY ADVISERS.—The transactions referred to in subsection (d)(16), in connection with the provision of investment advice by a fiduciary adviser, are the following:

''(i) the provision of the advice to the plan, participant, or beneficiary;

''(ii) the sale, acquisition, or holding of a security or other property (including any lending of money or other extension of credit associated with the sale, acquisition, or holding of a security or other property) pursuant to the advice; and

''(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of the advice or in connection with a sale, acquisition, or holding of a security or other property pursuant to the advice.

''(B) REQUIREMENTS RELATING TO PROVISION OF INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—The requirements of this subparagraph (referred to in subsection (d)(16)(C)) are met in connection with the provision of investment advice referred to in subsection (e)(3)(B), provided to a plan or a participant or beneficiary of a plan by a fiduciary adviser with respect to the plan in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of amounts held by the plan, if—

''(i) in the case of the initial provision of the advice with regard to the security or other property by the fiduciary adviser to the plan, participant, or beneficiary, the fiduciary adviser provides to the recipient of the advice, at a time reasonably contemporaneous with the initial provision of the advice, a written notification (which may consist of notification by means of electronic communication)—

''(I) of all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property,

''(II) of any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property,

''(III) of any limitation placed on the scope of the investment advice to be provided by the fiduciary adviser with respect to any such sale, acquisition, or holding of a security or other property,

''(IV) of the types of services provided by the fiduciary adviser in connection with the provision of investment advice by the fiduciary adviser,

''(V) that the adviser is acting as a fiduciary of the plan in connection with the provision of the advice, and

''(VI) that a recipient of the advice may separately arrange for the provision of advice by another adviser, that could have no material affiliation with and receive no fees or other compensation in connection with the security or other property,

''(ii) the fiduciary adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws,

''(iii) the sale, acquisition, or holding occurs solely at the direction of the recipient of the advice,

''(iv) the compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property is reasonable, and

''(v) the terms of the sale, acquisition, or holding of the security or other property are at least as favorable to the plan as an arm's length transaction would be.

''(C) STANDARDS FOR PRESENTATION OF INFORMATION.—The notification required to be provided to participants and beneficiaries under subparagraph (B)(i) shall be written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

''(D) EXEMPTION CONDITIONED ON MAKING REQUIRED INFORMATION AVAILABLE ANNUALLY, ON REQUEST, AND IN THE EVENT OF MATERIAL CHANGE.—The requirements of subparagraph (B)(i) shall be deemed not to have been met in connection with the initial or any subsequent provision of advice described in subparagraph (B) to the plan, participant, or beneficiary if, at any time during the provision of advisory services to the plan, participant, or beneficiary, the fiduciary adviser fails to maintain the information described in subclauses (I) through (IV) of subparagraph (B)(i) in currently accurate form and in the manner required by subparagraph (C), or fails—

''(i) to provide, without charge, such currently accurate information to the recipient of the advice no less than annually,

''(ii) to make such currently accurate information available, upon request and without charge, to the recipient of the advice, or

''(iii) in the event of a material change to the information described in subclauses (I) through (IV) of subparagraph (B)(i), to provide, without charge, such currently accurate information to the recipient of the advice at a time reasonably contemporaneous to the material change in information.

''(E) MAINTENANCE FOR 6 YEARS OF EVIDENCE OF COMPLIANCE.—A fiduciary adviser referred to in subparagraph (B) who has provided advice referred to in such subparagraph shall, for a period of not less than 6 years after the provision of the advice, maintain any records necessary for determining whether the requirements of the preceding provisions of this paragraph and of subsection (d)(16) have been met. A transaction prohibited under subsection (c)(1) shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

''(F) EXEMPTION FOR PLAN SPONSOR AND CERTAIN OTHER FIDUCIARIES.—A plan sponsor or other person who is a fiduciary (other than a fiduciary adviser) shall not be treated as failing to meet the requirements of this section solely by reason of the provision of investment advice referred to in subsection (e)(3)(B) (or solely by reason of contracting for or otherwise arranging for the provision of the advice), if—

''(i) the advice is provided by a fiduciary adviser pursuant to an arrangement between the plan sponsor or other fiduciary and the fiduciary adviser for the provision by the fiduciary adviser of investment advice referred to in such section,

''(ii) the terms of the arrangement require compliance by the fiduciary adviser with the requirements of this paragraph,

''(iii) the terms of the arrangement include a written acknowledgment by the fiduciary adviser that the fiduciary adviser is a fiduciary of the plan with respect to the provision of the advice, and

''(iv) the requirements of part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 are met in connection with the provision of such advice.

''(G) DEFINITIONS.—For purposes of this paragraph and subsection (d)(16)—

''(i) FIDUCIARY ADVISER.—The term 'fiduciary adviser' means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice by the person to the plan or to a participant or beneficiary and who is—

''(I) registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or under the laws of the State in which the fiduciary maintains its principal office and place of business,

''(II) a bank or similar financial institution referred to in subsection (d)(4) or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1))), but only if the advice is provided through a trust department of the bank or similar financial institution or savings association which is subject to periodic examination and review by Federal or State banking authorities,

''(III) an insurance company qualified to do business under the laws of a State,

''(IV) a person registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

''(V) an affiliate of a person described in any of subclauses (I) through (IV), or

''(VI) an employee, agent, or registered representative of a person described in any of subclauses (I) through (V) who satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of the advice.

''(ii) AFFILIATE.—The term 'affiliate' of another entity means an affiliated person of the entity (as defined in section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3))).

''(iii) REGISTERED REPRESENTATIVE.—The term 'registered representative' of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)) (substituting the entity for the investment adviser referred to in such section).''.

SEC. 106. STUDY REGARDING IMPACT ON RETIREMENT SAVINGS OF PARTICIPANTS AND BENEFICIARIES BY REQUIRING CONSULTANTS TO ADVISE PLAN FIDUCIARIES OF INDIVIDUAL ACCOUNT PLANS.

(a) STUDY.—As soon as practicable after the date of the enactment of this Act, the Secretary of Labor shall undertake a study of the costs and benefits to participants and beneficiaries of requiring independent consultants to advise plan fiduciaries in connection with individual account plans. In conducting such study, the Secretary shall consider—

(1) the benefits to plan participants and beneficiaries of engaging independent advisers to provide investment and other advice regarding the assets of the plan to persons who have fiduciary duties with respect to the management or disposition of such assets,

(2) the extent to which independent advisers are currently retained by plan fiduciaries,

(3) the availability of assistance to fiduciaries from appropriate Federal agencies,

(4) the availability of qualified independent consultants to serve the needs of individual account plan fiduciaries in the United States,

(5) the impact of the additional fiduciary duty of an independent advisor on the strict fiduciary obligations of plan fiduciaries,

(6) the impact of new requirements (consulting fees, reporting requirements, and new plan duties to prudently identify and contract with qualified independent consultants) on the availability of individual account plans, and

(7) the impact of a new requirement on the plan administration costs per participant for small and mid-size employers and the pension plans they sponsor.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Labor shall report the results of the study undertaken pursuant to this section, together with any recommendations for legislative changes, to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate.

SEC. 107. TREATMENT OF QUALIFIED RETIREMENT PLANNING SERVICES.

(a) IN GENERAL.—Subsection (m) of section 132 of the Internal Revenue Code of 1986 (defining qualified retirement services) is amended by adding at the end the following new paragraph:

''(4) NO CONSTRUCTIVE RECEIPT.—No amount shall be included in the gross income of any employee solely because the employee may choose between any qualified retirement planning services provided by a qualified investment advisor and compensation which would otherwise be includible in the gross income of such employee. The preceding sentence shall apply to highly compensated employees only if the choice described in such sentence is available on substantially the same terms to each member of the group of employees normally provided education and information regarding the employer's qualified employer plan.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 403(b)(3)(B) of such Code is amended by inserting ''132(m)(4),'' after ''132(f)(4),''.

(2) Section 414(s)(2) of such Code is amended by inserting ''132(m)(4),'' after ''132(f)(4),''.

(3) Section 415(c)(3)(D)(ii) of such Code is amended by inserting ''132(m)(4),'' after ''132(f)(4),''.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 108. EFFECTIVE DATES AND RELATED RULES.

(a) IN GENERAL.—Except as otherwise provided in this title or in subsection (b), the amendments made by this Act shall apply with respect to plan years beginning on or after the general effective date.

(b) GENERAL EFFECTIVE DATE.—For purposes of this section, the term ''general effective date'' means the date which is 1 year after the date of the enactment of this Act.

(c) SPECIAL RULE FOR COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act, subsection (a) shall be applied to benefits pursuant to, and individuals covered by, any such agreement by substituting for ''the general effective date'' the date of the commencement of the first plan year beginning on or after the earlier of—

(1) the later of—

(A) the date which is 1 year after the general effective date, or

(B) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after the date of the enactment of this Act), or

(2) the date which is 2 years after the general effective date.

(d) AMENDMENTS RELATING TO INVESTMENT ADVICE.—The amendments made by section 105 shall apply with respect to advice referred to in section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974 or section 4975(c)(3)(B) of the Internal Revenue Code of 1986 provided on or after January 1, 2005.

TITLE II—OTHER PROVISIONS RELATING TO PENSIONS

SEC. 201. AMENDMENTS TO RETIREMENT PROTECTION ACT OF 1994.

(a) TRANSITION RULE MADE PERMANENT.—Paragraph (1) of section 769(c) of the Retirement Protection Act of 1994 is amended—

(1) by striking ''transition'' each place it appears in the heading and the text, and

(2) by striking ''for any plan year beginning after 1996 and before 2010''.

(b) SPECIAL RULES.—Paragraph (2) of section 769(c) of the Retirement Protection Act of 1994 is amended to read as follows:

''(2) SPECIAL RULES.—The rules described in this paragraph are as follows:

''(A) For purposes of section 412(l)(9)(A) of the Internal Revenue Code of 1986 and section 302(d)(9)(A) of the Employee Retirement Income Security Act of 1974, the funded current liability percentage for any plan year shall be treated as not less than 90 percent.

''(B) For purposes of section 412(m) of the Internal Revenue Code of 1986 and section 302(e) of the Employee Retirement Income Security Act of 1974, the funded current liability percentage for any plan year shall be treated as not less than 100 percent.

''(C) For purposes of determining unfunded vested benefits under section 4006(a)(3)(E)(iii) of the Employee Retirement Income Security Act of 1974, the mortality table shall be the mortality table used by the plan.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2002.

SEC. 202. REPORTING SIMPLIFICATION.

(a) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR OWNERS AND THEIR SPOUSES.—

(1) IN GENERAL.—The Secretary of the Treasury and the Secretary of Labor shall modify the requirements for filing annual returns with respect to one-participant retirement plans to ensure that such plans with assets of $250,000 or less as of the close of the plan year need not file a return for that year.

(2) ONE-PARTICIPANT RETIREMENT PLAN DEFINED.—For purposes of this subsection, the term ''one-participant retirement plan'' means a retirement plan with respect to which the following requirements are met:

(A) on the first day of the plan year—

(i) the plan covered only one individual (or the individual and the individual's spouse) and the individual owned 100 percent of the plan sponsor (whether or not incorporated), or

(ii) the plan covered only one or more partners (or partners and their spouses) in the plan sponsor;

(B) the plan meets the minimum coverage requirements of 410(b) of the Internal Revenue Code of 1986 without being combined with any other plan of the business that covers the employees of the business;

(C) the plan does not provide benefits to anyone except the individual (and the individual's spouse) or the partners (and their spouses);

(D) the plan does not cover a business that is a member of an affiliated service group, a controlled group of corporations, or a group of businesses under common control; and

(E) the plan does not cover a business that leases employees.

(3) OTHER DEFINITIONS.—Terms used in paragraph (2) which are also used in section 414 of the Internal Revenue Code of 1986 shall have the respective meanings given such terms by such section.

(4) EFFECTIVE DATE.—The provisions of this subsection shall apply to plan years beginning on or after January 1, 2003.

(b) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR PLANS WITH FEWER THAN 25 EMPLOYEES.—In the case of plan years beginning after December 31, 2004, the Secretary

of the Treasury and the Secretary of Labor shall provide for the filing of a simplified annual return for any retirement plan which covers less than 25 employees on the first day of a plan year and which meets the requirements described in subparagraphs (B), (D), and (E) of subsection (a)(2).

SEC. 203. IMPROVEMENT OF EMPLOYEE PLANS COMPLIANCE RESOLUTION SYSTEM.

The Secretary of the Treasury shall continue to update and improve the Employee Plans Compliance Resolution System (or any successor program) giving special attention to—

(1) increasing the awareness and knowledge of small employers concerning the availability and use of the program;

(2) taking into account special concerns and circumstances that small employers face with respect to compliance and correction of compliance failures;

(3) extending the duration of the self-correction period under the Self-Correction Program for significant compliance failures;

(4) expanding the availability to correct insignificant compliance failures under the Self-Correction Program during audit; and

(5) assuring that any tax, penalty, or sanction that is imposed by reason of a compliance failure is not excessive and bears a reasonable relationship to the nature, extent, and severity of the failure.

The Secretary of the Treasury shall have full authority to effectuate the foregoing with respect to the Employee Plans Compliance Resolution System (or any successor program) and any other employee plans correction policies, including the authority to waive income, excise, or other taxes to ensure that any tax, penalty, or sanction is not excessive and bears a reasonable relationship to the nature, extent, and severity of the failure.

SEC. 204. FLEXIBILITY IN NONDISCRIMINATION, COVERAGE, AND LINE OF BUSINESS RULES.

(a) NONDISCRIMINATION.—

(1) IN GENERAL.—The Secretary of the Treasury shall, by regulation, provide that a plan shall be deemed to satisfy the requirements of section 401(a)(4) of the Internal Revenue Code of 1986 if such plan satisfies the facts and circumstances test under section 401(a)(4) of such Code, as in effect before January 1, 1994, but only if—

(A) the plan satisfies conditions prescribed by the Secretary to appropriately limit the availability of such test; and

(B) the plan is submitted to the Secretary for a determination of whether it satisfies such test.

Subparagraph (B) shall only apply to the extent provided by the Secretary.

(2) EFFECTIVE DATES.—

(A) REGULATIONS.—The regulation required by paragraph (1) shall apply to years beginning after December 31, 2004.

(B) CONDITIONS OF AVAILABILITY.—Any condition of availability prescribed by the Secretary under paragraph (1)(A) shall not apply before the first year beginning not less than 120 days after the date on which such condition is prescribed.

(b) COVERAGE TEST.—

(1) IN GENERAL.—Section 410(b)(1) of the Internal Revenue Code of 1986 (relating to minimum coverage requirements) is amended by adding at the end the following:

''(D) In the case that the plan fails to meet the requirements of subparagraphs (A), (B) and (C), the plan—

''(i) satisfies subparagraph (B), as in effect immediately before the enactment of the Tax Reform Act of 1986,

''(ii) is submitted to the Secretary for a determination of whether it satisfies the requirement described in clause (i), and

''(iii) satisfies conditions prescribed by the Secretary by regulation that appropriately limit the availability of this subparagraph.

Clause (ii) shall apply only to the extent provided by the Secretary.''.

(2) EFFECTIVE DATES.—

(A) IN GENERAL.—The amendment made by paragraph (1) shall apply to years beginning after December 31, 2004.

(B) CONDITIONS OF AVAILABILITY.—Any condition of availability prescribed by the Secretary under regulations prescribed by the Secretary under section 410(b)(1)(D) of the Internal Revenue Code of 1986 shall not apply before the first year beginning not less than 120 days after the date on which such condition is prescribed.

(c) LINE OF BUSINESS RULES.—The Secretary of the Treasury shall, on or before December 31, 2004, modify the existing regulations issued under section 414(r) of the Internal Revenue Code of 1986 in order to expand (to the extent that the Secretary determines appropriate) the ability of a pension plan to demonstrate compliance with the line of business requirements based upon the facts and circumstances surrounding the design and operation of the plan, even though the plan is unable to satisfy the mechanical tests currently used to determine compliance.

SEC. 205. EXTENSION TO ALL GOVERNMENTAL PLANS OF MORATORIUM ON APPLICATION OF CERTAIN NONDISCRIMINATION RULES APPLICABLE TO STATE AND LOCAL PLANS.

(a) IN GENERAL.—

(1) Subparagraph (G) of section 401(a)(5) of the Internal Revenue Code of 1986 and subparagraph (H) of section 401(a)(26) of such Code are each amended by striking ''section 414(d))'' and all that follows and inserting ''section 414(d)).''.

(2) Subparagraph (G) of section 401(k)(3) of the Internal Revenue Code of 1986 and paragraph (2) of section 1505(d) of the Taxpayer Relief Act of 1997 are each amended by striking ''maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof)''.

(b) CONFORMING AMENDMENTS.—

(1) The heading for subparagraph (G) of section 401(a)(5) of such Code is amended to read as follows: ''GOVERNMENTAL PLANS.—''.

(2) The heading for subparagraph (H) of section 401(a)(26) of such Code is amended to read as follows: ''EXCEPTION FOR GOVERNMENTAL PLANS.—''.

(3) Subparagraph (G) of section 401(k)(3) of such Code is amended by inserting ''GOVERNMENTAL PLANS.—'' after ''(G)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 2003.

SEC. 206. NOTICE AND CONSENT PERIOD REGARDING DISTRIBUTIONS.

(a) EXPANSION OF PERIOD.—

(1) AMENDMENT OF INTERNAL REVENUE CODE.—

(A) IN GENERAL.—Subparagraph (A) of section 417(a)(6) of the Internal Revenue Code of 1986 is amended by striking ''90-day'' and inserting ''180-day''.

(B) MODIFICATION OF REGULATIONS.—The Secretary of the Treasury shall modify the regulations under sections 402(f), 411(a)(11), and 417 of the Internal Revenue Code of 1986 to substitute ''180 days'' for ''90 days'' each place it appears in Treasury Regulations sections 1.402(f)–1, 1.411(a)–11(c), and 1.417(e)–1(b).

(2) AMENDMENT OF ERISA.—

(A) IN GENERAL.—Section 205(c)(7)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1055(c)(7)(A)) is amended by striking ''90-day'' and inserting ''180-day''.

(B) MODIFICATION OF REGULATIONS.—The Secretary of the Treasury shall modify the regulations under part 2 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 to the extent that they relate to sections 203(e) and 205 of such Act to substitute ''180 days'' for ''90 days'' each place it appears.

(3) EFFECTIVE DATE.—The amendments made by paragraphs (1)(A) and (2)(A) and the modifications required by paragraphs (1)(B) and (2)(B) shall apply to years beginning after December 31, 2003.

(b) CONSENT REGULATION INAPPLICABLE TO CERTAIN DISTRIBUTIONS.—

(1) IN GENERAL.—The Secretary of the Treasury shall modify the regulations under section 411(a)(11) of the Internal Revenue Code of 1986 and under section 205 of the Employee Retirement Income Security Act of 1974 to provide that the description of a participant's right, if any, to defer receipt of a distribution shall also describe the consequences of failing to defer such receipt.

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—The modifications required by paragraph (1) shall apply to years beginning after December 31, 2003.

(B) REASONABLE NOTICE.—In the case of any description of such consequences made before the date that is 90 days after the date on which the Secretary of the Treasury issues a safe harbor description under paragraph (1), a plan shall not be treated as failing to satisfy the requirements of section 411(a)(11) of such Code or section 205 of such Act by reason of the failure to provide the information required by the modifications made under paragraph (1) if the Administrator of such plan makes a reasonable attempt to comply with such requirements.

SEC. 207. ANNUAL REPORT DISSEMINATION.

(a) REPORT AVAILABLE THROUGH ELECTRONIC MEANS.—Section 104(b)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1024(b)(3)) is amended by adding at the end the following new sentence: ''The requirement to furnish information under the previous sentence with respect to an employee pension benefit plan shall be satisfied if the administrator makes such information reasonably available through electronic means or other new technology.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to reports for years beginning after December 31, 2003.

SEC. 208. TECHNICAL CORRECTIONS TO SAVER ACT.

Section 517 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1147) is amended—

(1) in subsection (a), by striking ''2001 and 2005 on or after September 1 of each year involved'' and inserting ''2006 and 2010'';

(2) in subsection (e)(2)—

(A) by striking ''Committee on Labor and Human Resources'' in subparagraph (D) and inserting ''Committee on Health, Education, Labor, and Pensions'';

(B) by striking subparagraph (F) and inserting the following:

''(F) the Chairman and Ranking Member of the Subcommittee on Labor, Health and Human Services, and Education of the Committee on Appropriations of the House of Representatives and the Chairman and Ranking Member of the Subcommittee on Labor, Health and Human Services, and Education of the Committee on Appropriations of the Senate;'';

(C) by redesignating subparagraph (G) as subparagraph (J); and

(D) by inserting after subparagraph (F) the following new subparagraphs:

''(G) the Chairman and Ranking Member of the Committee on Finance of the Senate;

''(H) the Chairman and Ranking Member of the Committee on Ways and Means of the House of Representatives;

''(I) the Chairman and Ranking Member of the Subcommittee on Employer-Employee Relations of the Committee on Education and the Workforce of the House of Representatives; and'';

(3) in subsection (e)(3)(B), by striking ''January 31, 1998'' and inserting ''2 months before the convening of each summit;'';

(4) in subsection (f)(1)(C), by inserting '', no later than 60 days prior to the date of the commencement of the National Summit,'' after ''comment'';

(5) in subsection (i)—

(A) by striking ''for fiscal years beginning on or after October 1, 1997,''; and

(B) by adding at the end the following new paragraph:

''(3) RECEPTION AND REPRESENTATION AUTHORITY.—The Secretary is hereby granted reception and representation authority limited specifically to the events at the National Summit. The Secretary shall use any private contributions accepted in connection with the National Summit prior to using funds appropriated for purposes of the National Summit pursuant to this paragraph.''; and

(6) in subsection (k)—

(A) by striking ''shall enter into a contract on a sole-source basis'' and inserting ''may enter into a contract on a sole-source basis''; and

(B) by striking ''in fiscal year 1998''.

SEC. 209. MISSING PARTICIPANTS.

(a) IN GENERAL.—Section 4050 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1350) is amended by redesignating subsection (c) as subsection (e) and by inserting after subsection (b) the following new subsections:

''(c) MULTIEMPLOYER PLANS.—The corporation shall prescribe rules similar to the rules in subsection (a) for multiemployer plans covered by this title that terminate under section 4041A.

''(d) PLANS NOT OTHERWISE SUBJECT TO TITLE.—

''(1) TRANSFER TO CORPORATION.—The plan administrator of a plan described in paragraph (4) may elect to transfer a missing participant's benefits to the corporation upon termination of the plan.

''(2) INFORMATION TO THE CORPORATION.—To the extent provided in regulations, the plan administrator of a plan described in paragraph (4) shall, upon termination of the plan, provide the corporation information with respect to benefits of a missing participant if the plan transfers such benefits—

''(A) to the corporation, or

''(B) to an entity other than the corporation or a plan described in paragraph (4)(B)(ii).

''(3) PAYMENT BY THE CORPORATION.—If benefits of a missing participant were transferred to the corporation under paragraph (1), the corporation shall, upon location of the participant or beneficiary, pay to the participant or beneficiary the amount transferred (or the appropriate survivor benefit) either—

''(A) in a single sum (plus interest), or

''(B) in such other form as is specified in regulations of the corporation.

''(4) PLANS DESCRIBED.—A plan is described in this paragraph if—

''(A) the plan is a pension plan (within the meaning of section 3(2))—

''(i) to which the provisions of this section do not apply (without regard to this subsection), and

''(ii) which is not a plan described in paragraphs (2) through (11) of section 4021(b), and

''(B) at the time the assets are to be distributed upon termination, the plan—

''(i) has missing participants, and

''(ii) has not provided for the transfer of assets to pay the benefits of all missing participants to another pension plan (within the meaning of section 3(2)).

''(5) CERTAIN PROVISIONS NOT TO APPLY.—Subsections (a)(1) and (a)(3) shall not apply to a plan described in paragraph (4).''.

(b) CONFORMING AMENDMENTS.—Section 206(f) of such Act (29 U.S.C. 1056(f)) is amended—

(1) by striking ''title IV'' and inserting ''section 4050''; and

(2) by striking ''the plan shall provide that,''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions made after final regulations implementing subsections (c) and (d) of section 4050 of the Employee Retirement Income Security Act of 1974 (as added by subsection (a)), respectively, are prescribed.

SEC. 210. REDUCED PBGC PREMIUM FOR NEW PLANS OF SMALL EMPLOYERS.

(a) IN GENERAL.—Subparagraph (A) of section 4006(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)(A)) is amended—

(1) in clause (i), by inserting ''other than a new single-employer plan (as defined in subparagraph (F)) maintained by a small employer (as so defined),'' after ''single-employer plan,'',

(2) in clause (iii), by striking the period at the end and inserting '', and'', and

(3) by adding at the end the following new clause:

''(iv) in the case of a new single-employer plan (as defined in subparagraph (F)) maintained by a small employer (as so defined) for the plan year, $5 for each individual who is a participant in such plan during the plan year.''.

(b) DEFINITION OF NEW SINGLE-EMPLOYER PLAN.—Section 4006(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)) is amended by adding at the end the following new subparagraph:

''(F)(i) For purposes of this paragraph, a single-employer plan maintained by a contributing sponsor shall be treated as a new single-employer plan for each of its first 5 plan years if, during the 36-month period ending on the date of the adoption of such plan, the sponsor or any member of such sponsor's controlled group (or any predecessor of either) did not establish or maintain a plan to which this title applies with respect to which benefits were accrued for substantially the same employees as are in the new single-employer plan.

''(ii)(I) For purposes of this paragraph, the term 'small employer' means an employer which on the first day of any plan year has, in aggregation with all members of the controlled group of such employer, 100 or fewer employees.

''(II) In the case of a plan maintained by two or more contributing sponsors that are not part of the same controlled group, the employees of all contributing sponsors and controlled groups of such sponsors shall be aggregated for purposes of determining whether any contributing sponsor is a small employer.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plans first effective after December 31, 2003.

SEC. 211. REDUCTION OF ADDITIONAL PBGC PREMIUM FOR NEW AND SMALL PLANS.

(a) NEW PLANS.—Subparagraph (E) of section 4006(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)(E)) is amended by adding at the end the following new clause:

''(v) In the case of a new defined benefit plan, the amount determined under clause (ii) for any plan year shall be an amount equal to the product of the amount determined under clause (ii) and the applicable percentage. For purposes of this clause, the term 'applicable percentage' means—

''(I) 0 percent, for the first plan year.

''(II) 20 percent, for the second plan year.

''(III) 40 percent, for the third plan year.

''(IV) 60 percent, for the fourth plan year.

''(V) 80 percent, for the fifth plan year.

For purposes of this clause, a defined benefit plan (as defined in section 3(35)) maintained by a contributing sponsor shall be treated as a new defined benefit plan for each of its first 5 plan years if, during the 36-month period ending on the date of the adoption of the plan, the sponsor and each member of any controlled group including the sponsor (or any predecessor of either) did not establish or maintain a plan to which this title applies with respect to which benefits were accrued for substantially the same employees as are in the new plan.''.

(b) SMALL PLANS.—Paragraph (3) of section 4006(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)), as amended by section 210(b), is amended—

(1) by striking ''The'' in subparagraph (E)(i) and inserting ''Except as provided in subparagraph (G), the'', and

(2) by inserting after subparagraph (F) the following new subparagraph:

''(G)(i) In the case of an employer who has 25 or fewer employees on the first day of the plan year, the additional premium determined under subparagraph (E) for each participant shall not exceed $5 multiplied by the number of participants in the plan as of the close of the preceding plan year.

''(ii) For purposes of clause (i), whether an employer has 25 or fewer employees on the first day of the plan year is determined by taking into consideration all of the employees of all members of the contributing sponsor's controlled group. In the case of a plan maintained by two or more contributing sponsors, the employees of all contributing sponsors and their controlled groups shall be aggregated for purposes of determining whether the 25-or-fewer-employees limitation has been satisfied.''.

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendments made by subsection (a) shall apply to plans first effective after December 31, 2003.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to plan years beginning after December 31, 2003.

SEC. 212. AUTHORIZATION FOR PBGC TO PAY INTEREST ON PREMIUM OVERPAYMENT REFUNDS.

(a) IN GENERAL.—Section 4007(b) of the Employment Retirement Income Security Act of 1974 (29 U.S.C. 1307(b)) is amended—

(1) by striking ''(b)'' and inserting ''(b)(1)'', and

(2) by inserting at the end the following new paragraph:

''(2) The corporation is authorized to pay, subject to regulations prescribed by the corporation, interest on the amount of any overpayment of premium refunded to a designated payor. Interest under this paragraph shall be calculated at the same rate and in the same manner as interest is calculated for underpayments under paragraph (1).''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to interest accruing for periods beginning not earlier than the date of the enactment of this Act.

SEC. 213. SUBSTANTIAL OWNER BENEFITS IN TERMINATED PLANS.

(a) MODIFICATION OF PHASE-IN OF GUARANTEE.—Section 4022(b)(5) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1322(b)(5)) is amended to read as follows:

''(5)(A) For purposes of this paragraph, the term 'majority owner' means an individual who, at any time during the 60-month period ending on the date the determination is being made—

''(i) owns the entire interest in an unincorporated trade or business,

''(ii) in the case of a partnership, is a partner who owns, directly or indirectly, 50 percent or more of either the capital interest or the profits interest in such partnership, or

''(iii) in the case of a corporation, owns, directly or indirectly, 50 percent or more in value of either the voting stock of that corporation or all the stock of that corporation. For purposes of clause (iii), the constructive ownership rules of section 1563(e) of the Internal Revenue Code of 1986 shall apply (determined without regard to section 1563(e)(3)(C)).

''(B) In the case of a participant who is a majority owner, the amount of benefits guaranteed under this section shall equal the product of—

''(i) a fraction (not to exceed 1) the numerator of which is the number of years from the later of the effective date or the adoption date of the plan to the termination date, and the denominator of which is 10, and

''(ii) the amount of benefits that would be guaranteed under this section if the participant were not a majority owner.''.

(b) MODIFICATION OF ALLOCATION OF ASSETS.—

(1) Section 4044(a)(4)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1344(a)(4)(B)) is amended by striking ''section 4022(b)(5)'' and inserting ''section 4022(b)(5)(B)''.

(2) Section 4044(b) of such Act (29 U.S.C. 1344(b)) is amended—

(A) by striking ''(5)'' in paragraph (2) and inserting ''(4), (5),'', and

(B) by redesignating paragraphs (3) through (6) as paragraphs (4) through (7), respectively, and by inserting after paragraph (2) the following new paragraph:

''(3) If assets available for allocation under paragraph (4) of subsection (a) are insufficient to satisfy in full the benefits of all individuals who are described in that paragraph, the assets shall be allocated first to benefits described in subparagraph (A) of that paragraph. Any remaining assets shall then be allocated to benefits described in subparagraph (B) of that paragraph. If assets allocated to such subparagraph (B) are insufficient to satisfy in full the benefits described in that subparagraph, the assets shall be allocated pro rata among individuals on the basis of the present value (as of the termination date) of their respective benefits described in that subparagraph.''.

(c) CONFORMING AMENDMENTS.—

(1) Section 4021 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1321) is amended—

(A) in subsection (b)(9), by striking ''as defined in section 4022(b)(6)'', and

(B) by adding at the end the following new subsection:

''(d) For purposes of subsection (b)(9), the term 'substantial owner' means an individual who, at any time during the 60-month period ending on the date the determination is being made—

''(1) owns the entire interest in an unincorporated trade or business,

''(2) in the case of a partnership, is a partner who owns, directly or indirectly, more than 10 percent of either the capital interest or the profits interest in such partnership, or

''(3) in the case of a corporation, owns, directly or indirectly, more than 10 percent in value of either the voting stock of that corporation or all the stock of that corporation. For purposes of paragraph (3), the constructive ownership rules of section 1563(e) of the Internal Revenue Code of 1986 shall apply (determined without regard to section 1563(e)(3)(C)).''.

(2) Section 4043(c)(7) of such Act (29 U.S.C. 1343(c)(7)) is amended by striking ''section 4022(b)(6)'' and inserting ''section 4021(d)''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to plan terminations—

(A) under section 4041(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1341(c)) with respect to which notices of intent to terminate are provided under section 4041(a)(2) of such Act (29 U.S.C. 1341(a)(2)) after December 31, 2003, and

(B) under section 4042 of such Act (29 U.S.C. 1342) with respect to which proceedings are instituted by the corporation after such date.

(2) CONFORMING AMENDMENTS.—The amendments made by subsection (c) shall take effect on January 1, 2004.

SEC. 214. BENEFIT SUSPENSION NOTICE.

(a) MODIFICATION OF REGULATION.—The Secretary of Labor shall modify the regulation under subparagraph (B) of section 203(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(a)(3)(B)) to provide that the notification required by such regulation in connection with any suspension of benefits described in such subparagraph—

(1) in the case of an employee who returns to service described in section 203(a)(3)(B)(i) or (ii) of such Act after commencement of payment of benefits under the plan, shall be made during the first calendar month or the first 4 or 5-week payroll period ending in a calendar month in which the plan withholds payments, and

(2) in the case of any employee who is not described in paragraph (1)—

(A) may be included in the summary plan description for the plan furnished in accordance with section 104(b) of such Act (29 U.S.C. 1024(b)), rather than in a separate notice, and

(B) need not include a copy of the relevant plan provisions.

(b) EFFECTIVE DATE.—The modification made under this section shall apply to plan years beginning after December 31, 2003.

SEC. 215. STUDIES.

(a) MODEL SMALL EMPLOYER GROUP PLANS STUDY.—As soon as practicable after the date of the enactment of this Act, the Secretary of Labor, in consultation with the Secretary of the Treasury, shall conduct a study to determine—

(1) the most appropriate form or forms of—

(A) employee pension benefit plans which would—

(i) be simple in form and easily maintained by multiple small employers, and

(ii) provide for ready portability of benefits for all participants and beneficiaries,

(B) alternative arrangements providing comparable benefits which may be established by employee or employer associations, and

(C) alternative arrangements providing comparable benefits to which employees may contribute in a manner independent of employer sponsorship, and

(2) appropriate methods and strategies for making pension plan coverage described in paragraph (1) more widely available to American workers.

(b) MATTERS TO BE CONSIDERED.—In conducting the study under subsection (a), the Secretary of Labor shall consider the adequacy and availability of existing employee pension benefit plans and the extent to which existing models may be modified to be more accessible to both employees and employers.

(c) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Labor shall report the results of the study under subsection (a), together with the Secretary's recommendations, to the Committee on Education and the Workforce and the Committee on Ways and Means of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate. Such recommendations shall include one or more model plans described in subsection (a)(1)(A) and model alternative arrangements described in subsections (a)(1)(B) and (a)(1)(C) which may serve as the basis for appropriate administrative or legislative action.

(d) STUDY ON EFFECT OF LEGISLATION.—Not later than 5 years after the date of the enactment of this Act, the Secretary of Labor shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report on the effect of the provisions of this Act and title VI of the Economic Growth and Tax Relief Reconciliation Act of 2001 on pension plan coverage, including any change in—

(1) the extent of pension plan coverage for low and middle-income workers,

(2) the levels of pension plan benefits generally,

(3) the quality of pension plan coverage generally,

(4) workers' access to and participation in pension plans, and

(5) retirement security.

SEC. 216. INTEREST RATE RANGE FOR ADDITIONAL FUNDING REQUIREMENTS.

(a) IN GENERAL.—Subclause (III) of section 412(l)(7)(C)(i) of the Internal Revenue Code of 1986 is amended—

(1) by striking ''2002 or 2003'' in the text and inserting ''2001, 2002, or 2003'', and

(2) by striking ''2002 AND 2003'' in the heading and inserting ''2001, 2002, AND 2003''.

(b) SPECIAL RULE.—Subclause (III) of section 302(d)(7)(C)(i) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082(d)(7)(C)(i)) is amended—

(1) by striking ''2002 or 2003'' in the text and inserting ''2001, 2002, or 2003'', and

(2) by striking ''2002 AND 2003'' in the heading and inserting ''2001, 2002, AND 2003''.

(c) PBGC.—Subclause (IV) of section 4006(a)(3)(E)(iii) of such Act (29 U.S.C. 1306(a)(3)(E)(iii)) is amended to read as follows—

''(IV) In the case of plan years beginning after December 31, 2001, and before January 1, 2004, subclause (II) shall be applied by substituting '100 percent' for '85 percent' and by substituting '115 percent' for '100 percent'. Subclause (III) shall be applied for such years without regard to the preceding sentence. Any reference to this clause or this subparagraph by any other sections or subsections (other than sections 4005, 4010, 4011 and 4043) shall be treated as a reference to this clause or this subparagraph without regard to this subclause.''.

(d) EFFECTIVE DATE.—

(1) GENERAL RULE.—Subject to paragraph (2), the amendments made by this section shall take effect as if included in the amendments made by section 405 of the Job Creation and Worker Assistance Act of 2002.

(2) ELECTION.—The plan sponsor or plan administrator of a plan may elect whether to have the amendments made by subsections (a) and (b) apply. Such election shall be made in such manner and at such time as the Secretary of the Treasury or his delegate may prescribe and, once made, may not be revoked. An election to apply such amendments shall not be treated as a prohibited change in actuarial assumptions for purposes of reports required to be filed with the Secretary of Labor, the Secretary of Treasury, or the Pension Benefit Guaranty Corporation.

TITLE III—GENERAL PROVISIONS

SEC. 301. PROVISIONS RELATING TO PLAN AMENDMENTS.

(a) IN GENERAL.—If this section applies to any plan or contract amendment—

(1) such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in subsection (b)(2)(A), and

(2) except as provided by the Secretary of the Treasury, such plan shall not fail to meet the requirements of section 411(d)(6) of the Internal Revenue Code of 1986 and section 204(g) of the Employee Retirement Income Security Act of 1974 by reason of such amendment.

(b) AMENDMENTS TO WHICH SECTION APPLIES.—

(1) IN GENERAL.—This section shall apply to any amendment to any plan or annuity contract which is made—

(A) pursuant to any amendment made by section 101, 102, 103, or 104, by title II, or by title VI of the Economic Growth and Tax Relief Reconciliation Act of 2001, or pursuant to any regulation issued by the Secretary of the Treasury or the Secretary of Labor under any such section, title II, or such title VI, and

(B) on or before the last day of the first plan year beginning on or after January 1, 2006.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this paragraph shall be applied by substituting ''2008'' for ''2006''.

(2) CONDITIONS.—This section shall not apply to any amendment unless—

(A) during the period—

(i) beginning on the date the legislative or regulatory amendment described in paragraph (1)(A) takes effect (or in the case of a plan or contract amendment not required by such legislative or regulatory amendment, the effective date specified by the plan), and

(ii) ending on the date described in paragraph (1)(B) (or, if earlier, the date the plan or contract amendment is adopted),

the plan or contract is operated as if such plan or contract amendment were in effect; and

(B) such plan or contract amendment applies retroactively for such period.

The SPEAKER pro tempore. The amendment in the nature of a substitute printed in the bill is adopted.

The text of H.R. 1000, as amended, is as follows:

H.R. 1000

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Pension Security Act of 2003''.

(b) TABLE OF CONTENTS.—The table of contents is as follows:

TITLE I—IMPROVEMENTS IN PENSION SECURITY

SEC. 101. PERIODIC PENSION BENEFITS STATEMENTS.

(a) AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) REQUIREMENTS.—

(A) IN GENERAL.—Section 105(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1025(a)) is amended to read as follows:

''(a)(1)(A) The administrator of an individual account plan shall furnish a pension benefit statement—

''(i) to each plan participant at least annually,

''(ii) to each plan beneficiary upon written request, and

''(iii) in the case of an applicable individual account plan, to each individual who is a plan participant or beneficiary and who has a right to direct investments, at least quarterly.

''(B) The administrator of a defined benefit plan shall furnish a pension benefit statement—

''(i) at least once every 3 years to each participant with a nonforfeitable accrued benefit who is employed by the employer maintaining the plan at the time the statement is furnished to participants, and

''(ii) to a plan participant or plan beneficiary of the plan upon written request.

Information furnished under clause (i) to a participant may be based on reasonable estimates determined under regulations prescribed by the Secretary, in consultation with the Pension Benefit Guaranty Corporation.

''(2) A pension benefit statement under paragraph (1)—

''(A) shall indicate, on the basis of the latest available information—

''(i) the total benefits accrued, and

''(ii) the nonforfeitable pension benefits, if any, which have accrued, or the earliest date on which benefits will become nonforfeitable,

''(B) shall be written in a manner calculated to be understood by the average plan participant, and

''(C) may be provided in written form or in electronic or other appropriate form to the extent that such form is reasonably accessible to the recipient.

''(3)(A) In the case of a defined benefit plan, the requirements of paragraph (1)(B)(i) shall be treated as met with respect to a participant if the administrator, at least once each year, provides the participant with notice, at the participant's last known address, of the availability of the pension benefit statement and the ways in which the participant may obtain such statement. Such notice shall be provided in written, electronic, or other appropriate form, and may be included with other communications to the participant if done in a manner reasonably designed to attract the attention of the participant.

''(B) The Secretary may provide that years in which no employee or former employee benefits (within the meaning of section 410(b) of the Internal Revenue Code of 1986) under the plan need not be taken into account in determining the 3-year period under paragraph (1)(B)(i).''.

(B) CONFORMING AMENDMENTS.—

(i) Section 105 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1025) is amended by striking subsection (d).

(ii) Section 105(b) of such Act (29 U.S.C. 1025(b)) is amended to read as follows:

''(b) In no case shall a participant or beneficiary of a plan be entitled to more than one statement described in clause (i) or (ii) of subsection (a)(1)(A) or clause (i) or (ii) of subsection (a)(1)(B), whichever is applicable, in any 12-month period. If such report is required under subsection (a) to be furnished at least quarterly, the requirements of the preceding sentence shall be applied with respect to each quarter in lieu of the 12-month period.''.

(2) INFORMATION REQUIRED FROM APPLICABLE INDIVIDUAL ACCOUNT PLANS.—Section 105 of such Act (as amended by paragraph (1)) is amended further by adding at the end the following new subsection:

''(d)(1) The statements required to be provided at least quarterly under subsection (a)(1)(A)(iii) in the case of applicable individual account plans shall include (together with the information required in subsection (a)) the following:

''(A) the value of each investment to which assets in the individual account have been allocated, determined as of the most recent valuation date under the plan, including the value of any assets held in the form of employer securities, without regard to whether such securities were contributed by the plan sponsor or acquired at the direction of the plan or of the participant or beneficiary,

''(B) an explanation, written in a manner calculated to be understood by the average plan participant, of any limitations or restrictions on the right of the participant or beneficiary to direct an investment, and

''(C) an explanation, written in a manner calculated to be understood by the average plan participant, of the importance, for the long-term retirement security of participants and beneficiaries, of a well-balanced and diversified investment portfolio, including a discussion of the risk of holding more than 25 percent of a portfolio in the security of any one entity, such as employer securities.

''(2) The Secretary shall issue guidance and model notices which meet the requirements of this subsection.''.

(3) DEFINITION OF APPLICABLE INDIVIDUAL ACCOUNT PLAN.—Section 3 of such Act (29 U.S.C. 1002) is amended by adding at the end the following new paragraph:

''(42)(A) The term 'applicable individual account plan' means any individual account plan, except that such term does not include an employee stock ownership plan (within the meaning of section 4975(e)(7) of the Internal Revenue Code of 1986) unless there are any contributions to such plan (or earnings thereunder) held within such plan that are subject to subsection (k)(3) or (m)(2) of section 401 of the Internal Revenue Code of 1986. Such term shall not include a one-participant retirement plan.

''(B) The term 'one-participant retirement plan' means a pension plan with respect to which the following requirements are met:

''(i) on the first day of the plan year—

''(I) the plan covered only one individual (or the individual and the individual's spouse) and the individual owned 100 percent of the plan sponsor (whether or not incorporated), or

''(II) the plan covered only one or more partners (or partners and their spouses) in the plan sponsor;

''(ii) the plan meets the minimum coverage requirements of section 410(b) of the Internal Revenue Code of 1986 (as in effect on the date of the enactment of this paragraph) without being combined with any other plan of the business that covers the employees of the business;

''(iii) the plan does not provide benefits to anyone except the individual (and the individual's spouse) or the partners (and their spouses);

''(iv) the plan does not cover a business that is a member of an affiliated service group, a controlled group of corporations, or a group of businesses under common control; and

''(v) the plan does not cover a business that leases employees.''.

(4) CIVIL PENALTIES FOR FAILURE TO PROVIDE QUARTERLY BENEFIT STATEMENTS.—Section 502 of such Act (29 U.S.C. 1132) is amended—

(A) in subsection (a)(6), by striking ''(6), or (7)'' and inserting ''(6), (7), or (8)'';

(B) by redesignating paragraph (8) of subsection (c) as paragraph (9); and

(C) by inserting after paragraph (7) of subsection (c) the following new paragraph:

''(8) The Secretary may assess a civil penalty against any plan administrator of up to $1,000 a day for each day on which the plan administrator has failed to comply with the requirements of clause (iii) of section 105(a)(1)(A) and has not corrected such failure by providing the required pension benefit statements to the affected participants and beneficiaries.''.

(5) MODEL STATEMENTS.—The Secretary of Labor shall, not later than 180 days after the date of the enactment of this Act, issue initial guidance and a model benefit statement, written in a manner calculated to be understood by the average plan participant, that may be used by plan administrators in complying with the requirements of section 105 of the Employee Retirement Income Security Act of 1974. Not later than 75 days after the date of the enactment of this Act, the Secretary shall promulgate interim final rules necessary to carry out the amendments made by this subsection.

(b) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—

(1) PROVISION OF INVESTMENT EDUCATION NOTICES TO PARTICIPANTS IN CERTAIN PLANS.—Section 414 of the Internal Revenue Code of 1986 (relating to definitions and special rules) is amended by adding at the end the following:

''(w) PROVISION OF INVESTMENT EDUCATION NOTICES TO PARTICIPANTS IN CERTAIN PLANS.—

''(1) IN GENERAL.—The plan administrator of an applicable pension plan shall provide to each applicable individual an investment education notice described in paragraph (2) at the time of the enrollment of the applicable individual in the plan and not less often than annually thereafter.

''(2) INVESTMENT EDUCATION NOTICE.—An investment education notice is described in this paragraph if such notice contains—

''(A) an explanation, for the long-term retirement security of participants and beneficiaries, of generally accepted investment principles, including principles of risk management and diversification, and

''(B) a discussion of the risk of holding substantial portions of a portfolio in the security of any one entity, such as employer securities.

''(3) UNDERSTANDABILITY.—Each notice required by paragraph (1) shall be written in a manner calculated to be understood by the average plan participant and shall provide sufficient information (as determined in accordance with guidance provided by the Secretary) to allow recipients to understand such notice.

''(4) FORM AND MANNER OF NOTICES.—The notices required by this subsection shall be in writing, except that such notices may be in electronic or other form (or electronically posted on the plan's website) to the extent that such form is reasonably accessible to the applicable individual.

''(5) DEFINITIONS.—For purposes of this subsection—

''(A) APPLICABLE INDIVIDUAL.—The term 'applicable individual' means—

''(i) any participant in the applicable pension plan,

''(ii) any beneficiary who is an alternate payee (within the meaning of section 414(p)(8)) under a qualified domestic relations order (within the meaning of section 414(p)(1)(A)), and

''(iii) any beneficiary of a deceased participant or alternate payee.

''(B) APPLICABLE PENSION PLAN.—The term 'applicable pension plan' means—

''(i) a plan described in clause (i), (ii), or (iv) of section 219(g)(5)(A), and

''(ii) an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A),

which permits any participant to direct the investment of some or all of his account in the plan or under which the accrued benefit of any participant depends in whole or in part on hypothetical investments directed by the participant. Such term shall not include a one-participant retirement plan or a plan to which section 105 of the Employee Retirement Income Security Act of 1974 applies.

''(C) ONE-PARTICIPANT RETIREMENT PLAN DEFINED.—The term 'one-participant retirement plan' means a retirement plan with respect to which the following requirements are met:

''(i) on the first day of the plan year—

''(I) the plan covered only one individual (or the individual and the individual's spouse) and the individual owned 100 percent of the plan sponsor (whether or not incorporated), or

''(II) the plan covered only one or more partners (or partners and their spouses) in the plan sponsor;

''(ii) the plan meets the minimum coverage requirements of 410(b) without being combined with any other plan of the business that covers the employees of the business;

''(iii) the plan does not provide benefits to anyone except the individual (and the individual's spouse) or the partners (and their spouses);

''(iv) the plan does not cover a business that is a member of an affiliated service group, a controlled group of corporations, or a group of businesses under common control; and

''(v) the plan does not cover a business that leases employees.

''(6) CROSS REFERENCE.—

''For provisions relating to penalty for failure to provide the notice required by this section, see section 6652(m).''.

(2) PENALTY FOR FAILURE TO PROVIDE NOTICE.—Section 6652 of such Code (relating to failure to file certain information returns, registration statements, etc.) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

''(m) FAILURE TO PROVIDE INVESTMENT EDUCATION NOTICES TO PARTICIPANTS IN CERTAIN PLANS.—In the case of each failure to provide a written explanation as required by section 414(w) with respect to an applicable individual (as defined in such section), at the time prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid, on notice and demand of the Secretary and in the same manner as tax, by the person failing to provide such notice, an amount equal to $100 for each such failure, but the total amount imposed on such person for all such failures during any calendar year shall not exceed $50,000.''.

SEC. 102. INAPPLICABILITY OF RELIEF FROM FIDUCIARY LIABILITY DURING BLACKOUT PERIODS.

(a) IN GENERAL.—Section 404(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(c)) is amended by adding at the end the following new paragraph:

''(4)(A) Paragraph (1)(B) shall not apply in connection with the direction or diversification of assets credited to the account of any participant or beneficiary during a blackout period if, by reason of the imposition of such blackout period, the ability of such participant or beneficiary to direct or diversify such assets is suspended, limited, or restricted.

''(B) If the fiduciary authorizing a blackout period meets the requirements of this title in connection with authorizing such blackout period, no person who is a fiduciary shall be liable under this title for any loss occurring during the blackout period as a result of any exercise by the participant or beneficiary of control over assets in his or her account prior to the blackout period. Matters to be considered in determining whether a fiduciary has met the requirements of this title include whether such fiduciary—

''(i) has considered the reasonableness of the expected length of the blackout period,

''(ii) has provided the notice required under section 101(i)(2), and

''(iii) has acted in accordance with the requirements of subsection (a) in determining whether to enter into the blackout period.

''(C) If a blackout period arises in connection with a change in the investment options offered under the plan, a participant or beneficiary shall be deemed to have exercised control over the assets in his or her account prior to the blackout period, if, after reasonable notice of the change in investment options is given to such participant or beneficiary before such blackout period, assets in the account of the participant or beneficiary are transferred—

''(i) to plan investment options in accordance with the affirmative election of the participant or beneficiary, or

''(ii) in any case in which there is no such election, in the manner set forth in such notice.

''(D) Any imposition of any limitation or restriction that may govern the frequency of transfers between investment vehicles shall not be treated as the imposition of a blackout period to the extent such limitation or restriction is disclosed to participants or beneficiaries through the summary plan description or materials describing specific investment alternatives under the plan.

''(E) For purposes of this paragraph, the term 'blackout period' has the meaning given such term by section 101(i)(7).''.

(b) GUIDANCE.—The Secretary of Labor shall, on or before December 31, 2004, issue interim final regulations providing guidance on how plan sponsors or any other affected fiduciaries can satisfy their fiduciary responsibilities during any blackout period during which the ability of a participant or beneficiary to direct the investment of assets in his or her individual account is suspended.

SEC. 103. INFORMATIONAL AND EDUCATIONAL SUPPORT FOR PENSION PLAN FIDUCIARIES.

Section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104) is amended by adding at the end the following new subsection:

''(e) The Secretary shall establish a program under which information and educational resources shall be made available on an ongoing basis to persons serving as fiduciaries under employee pension benefit plans so as to assist such persons in diligently and effectively carrying out their fiduciary duties in accordance with this part. Such program shall provide information concerning the practices that define prudent investment procedures for plan fiduciaries.

Information provided under the program shall address the relevant investment considerations for defined benefit and defined contribution plans, including investment in employer securities by such plans. In developing such program, the Secretary shall solicit information from the public, including investment education professionals.''.

SEC. 104. DIVERSIFICATION REQUIREMENTS FOR DEFINED CONTRIBUTION PLANS THAT HOLD EMPLOYER SECURITIES.

(a) AMENDMENT TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Section 204 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054) is amended—

(1) by redesignating subsection (j) as subsection (k); and

(2) by inserting after subsection (i) the following new subsection:

''(j) DIVERSIFICATION REQUIREMENTS FOR INDIVIDUAL ACCOUNT PLANS THAT HOLD EMPLOYER SECURITIES.—

''(1) IN GENERAL.—An applicable individual account plan shall meet the requirements of paragraphs (2) and (3).

''(2) EMPLOYEE CONTRIBUTIONS AND ELECTIVE DEFERRALS INVESTED IN EMPLOYER SECURITIES.—In the case of the portion of the account attributable to employee contributions and elective deferrals which is invested in employer securities, a plan meets the requirements of this paragraph if each applicable individual may elect to direct the plan to divest any such securities in the individual's account and to reinvest an equivalent amount in other investment options which meet the requirements of paragraph (4).

''(3) EMPLOYER CONTRIBUTIONS INVESTED IN EMPLOYER SECURITIES.—

''(A) IN GENERAL.—In the case of the portion of the account attributable to employer contributions (other than elective deferrals to which paragraph (2) applies) which is invested in employer securities, a plan meets the requirements of this paragraph if, under the plan—

''(i) each applicable individual with a benefit based on 3 years of service may elect to direct the plan to divest any such securities in the individual's account and to reinvest an equivalent amount in other investment options which meet the requirements of paragraph (4), or

''(ii) with respect to any employer security allocated to an applicable individual's account during any plan year, such applicable individual may elect to direct the plan to divest such employer security after a date which is not later than 3 years after the end of such plan year and to reinvest an equivalent amount in other investment options which meet the requirements of paragraph (4).

''(B) APPLICABLE INDIVIDUAL WITH BENEFIT BASED ON 3 YEARS OF SERVICE.—For purposes of subparagraph (A), an applicable individual has a benefit based on 3 years of service if such individual would be an applicable individual if only participants in the plan who have completed at least 3 years of service (as determined under section 203(b)) were referred to in paragraph (5)(B)(i).

''(4) INVESTMENT OPTIONS.—The requirements of this paragraph are met if—

''(A) the plan offers not less than 3 investment options, other than employer securities, to which an applicable individual may direct the proceeds from the divestment of employer securities pursuant to this subsection, each of which is diversified and has materially different risk and return characteristics, and

''(B) the plan permits the applicable individual to choose from any of the investment options made available under the plan to which such proceeds may be so directed, subject to such restrictions as may be provided by the plan limiting such choice to periodic, reasonable opportunities occurring no less frequently than on a quarterly basis.

''(5) DEFINITIONS AND RULES.—For purposes of this subsection—

''(A) APPLICABLE INDIVIDUAL ACCOUNT PLAN.—The term 'applicable individual account plan' means any individual account plan, except that such term does not include an employee stock ownership plan (within the meaning of section 4975(e)(7) of the Internal Revenue Code of 1986) unless there are any contributions to such plan (or earnings thereon) held within such plan that are subject to subsection (k)(3) or (m)(2) of section 401 of the Internal Revenue Code of 1986.

''(B) APPLICABLE INDIVIDUAL.—The term 'applicable individual' means—

''(i) any participant in the plan, and

''(ii) any beneficiary of a participant referred to in clause (i) who has an account under the plan with respect to which the beneficiary is entitled to exercise the rights of the participant.

''(C) ELECTIVE DEFERRAL.—The term 'elective deferral' means an employer contribution described in section 402(g)(3)(A) of the Internal Revenue Code of 1986 (as in effect on the date of the enactment of this subsection).

''(D) EMPLOYER SECURITY.—The term 'employer security' shall have the meaning given such term by section 407(d)(1) of this Act (as in effect on the date of the enactment of this subsection).

''(E) EMPLOYEE STOCK OWNERSHIP PLAN.—The term 'employee stock ownership plan' shall have the same meaning given to such term by section 4975(e)(7) of the Internal Revenue Code of 1986 (as in effect on the date of the enactment of this subsection).

''(F) ELECTIONS.—Elections under this subsection may be made not less frequently than quarterly.

''(6) EXCEPTION WHERE THERE IS NO READILY TRADABLE STOCK.—This subsection shall not apply if there is no class of stock issued by the employer (or by a corporation which is an affiliate of the employer (as defined in section 407(d)(7))) that is readily tradable on an established securities market (or in such other circumstances as may be determined jointly by the Secretary of Labor and the Secretary of the Treasury in regulations).

''(7) TRANSITION RULE.—

''(A) IN GENERAL.—In the case of any individual account plan which, on the first day of the first plan year to which this subsection applies, holds employer securities of any class that were acquired before such date and on which there is a restriction on diversification otherwise precluded by this subsection, this subsection shall apply to such securities of such class held in any plan year only with respect to the number of such securities equal to the applicable percentage of the total number of such securities of such class held on such date.

''(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be as follows:

''Plan years for which provisions are effective:	*Applicable percentage:*
1st plan year	*20 percent.*
2nd plan year	*40 percent.*
3rd plan year	*60 percent.*
4th plan year	*80 percent.*
5th plan year or thereafter	*100 percent.*

''(C) ELECTIVE DEFERRALS TREATED AS SEPARATE PLAN NOT INDIVIDUAL ACCOUNT PLAN.—For purposes of subparagraph (A), the applicable percentage shall be 100 percent with respect to—

''(i) employee contributions to a plan under which any portion attributable to elective deferrals is treated as a separate plan under section 407(b)(2) as of the date of the enactment of this paragraph, and

''(ii) such elective deferrals.

''(D) COORDINATION WITH PRIOR ELECTIONS.—In any case in which a divestiture of investment in employer securities of any class held by an employee stock ownership plan prior to the effective date of this subsection was undertaken pursuant to other applicable Federal law prior to such date, the applicable percentage (as determined without regard to this subparagraph) in connection with such securities shall be reduced to the extent necessary to account for the amount to which such election applied.

''(8) REGULATIONS.—The Secretary of the Treasury shall prescribe regulations under this subsection in consultation with the Secretary of Labor.''.

(b) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—

(1) IN GENERAL.—Section 401(a) of the Internal Revenue Code of 1986 (relating to requirements for qualification) is amended by inserting after paragraph (34) the following new paragraph:

''(35) DIVERSIFICATION REQUIREMENTS FOR DEFINED CONTRIBUTION PLANS THAT HOLD EMPLOYER SECURITIES.—

''(A) IN GENERAL.—An applicable defined contribution plan shall meet the requirements of subparagraphs (B) and (C).

''(B) EMPLOYEE CONTRIBUTIONS AND ELECTIVE DEFERRALS INVESTED IN EMPLOYER SECURITIES.—In the case of the portion of the account attributable to employee contributions and elective deferrals which is invested in employer securities, a plan meets the requirements of this subparagraph if each applicable individual in such plan may elect to direct the plan to divest any such securities in the individual's account and to reinvest an equivalent amount in other investment options which meet the requirements of subparagraph (D).

''(C) EMPLOYER CONTRIBUTIONS INVESTED IN EMPLOYER SECURITIES.—

''(i) IN GENERAL.—In the case of the portion of the account attributable to employer contributions (other than elective deferrals to which subparagraph (B) applies) which is invested in employer securities, a plan meets the requirements of this subparagraph if, under the plan—

''(I) each applicable individual with a benefit based on 3 years of service may elect to direct the plan to divest any such securities in the individual's account and to reinvest an equivalent amount in other investment options which meet the requirements of subparagraph (D), or

''(II) with respect to any employer security allocated to an applicable individual's account during any plan year, such applicable individual may elect to direct the plan to divest such employer security after a date which is not later than 3 years after the end of such plan year and to reinvest an equivalent amount in other investment options which meet the requirements of subparagraph (D).

''(ii) APPLICABLE INDIVIDUAL WITH BENEFIT BASED ON 3 YEARS OF SERVICE.—For purposes of clause (i), an applicable individual has a benefit based on 3 years of service if such individual would be an applicable individual if only participants in the plan who have completed at least 3 years of service (as determined under section 411(a)) were referred to in subparagraph (E)(ii)(I).

''(D) INVESTMENT OPTIONS.—The requirements of this subparagraph are met if—

''(i) the plan offers not less than 3 investment options, other than employer securities, to which an applicable individual may direct the proceeds from the divestment of employer securities pursuant to this paragraph, each of which is diversified and has materially different risk and return characteristics, and

''(ii) the plan permits the applicable individual to choose from any of the investment options made available under the plan to which such proceeds may be so directed, subject to such restrictions as may be provided by the plan limiting such choice to periodic, reasonable opportunities occurring no less frequently than on a quarterly basis.

''(E) DEFINITIONS AND RULES.—For purposes of this paragraph—

''(i) APPLICABLE DEFINED CONTRIBUTION PLAN.—The term 'applicable defined contribution plan' means any defined contribution plan, except that such term does not include an employee stock ownership plan (within the meaning of section 4975(e)(7)) unless there are any contributions to such plan (or earnings thereon) held within such plan that are subject to subsection (k)(3) or (m)(2).

''(ii) APPLICABLE INDIVIDUAL.—The term 'applicable individual' means—

''(I) any participant in the plan, and

''(II) any beneficiary of a participant referred to in clause (i) who has an account under the plan with respect to which the beneficiary is entitled to exercise the rights of the participant.

''(iii) ELECTIVE DEFERRAL.—The term 'elective deferral' means an employer contribution described in section 402(g)(3)(A) (as in effect on the date of the enactment of this paragraph).

''(iv) EMPLOYER SECURITY.—The term 'employer security' shall have the meaning given such term by section 407(d)(1) of the Employee Retirement Income Security Act of 1974 (as in effect on the date of the enactment of this paragraph).

''(v) EMPLOYEE STOCK OWNERSHIP PLAN.—The term 'employee stock ownership plan' shall have the same meaning given to such term by section 4975(e)(7) of the Internal Revenue Code of 1986 (as in effect on the date of the enactment of this paragraph).

''(vi) ELECTIONS.—Elections under this paragraph may be made not less frequently than quarterly.

''(F) EXCEPTION WHERE THERE IS NO READILY TRADABLE STOCK.—This paragraph shall not apply if there is no class of stock issued by the employer that is readily tradable on an established securities market (or in such other circumstances as may be determined jointly by the Secretary of the Treasury and the Secretary of Labor in regulations).

''(G) TRANSITION RULE.—

''(i) IN GENERAL.—In the case of any defined contribution plan which, on the effective date of this subsection, holds employer securities of any class that were acquired before such date and on which there is a restriction on diversification otherwise precluded by this paragraph, this paragraph shall apply to such securities of such class held in any plan year only with respect to the number of such securities equal to the applicable percentage of the total number of such securities of such class held on such date.

''(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage shall be as follows:

''Plan years for which provisions are effective:	Applicable percentage:
1st plan year	20 percent.
2nd plan year	40 percent.
3rd plan year	60 percent.
4th plan year	80 percent.
5th plan year or thereafter	100 percent.

''(iii) ELECTIVE DEFERRALS TREATED AS SEPARATE PLAN NOT INDIVIDUAL ACCOUNT PLAN.—For purposes of clause (i), the applicable percentage shall be 100 percent with respect to—

''(I) employee contributions to a plan under which any portion attributable to elective deferrals is treated as a separate plan under section 407(b)(2) of the Employee Retirement Income Security Act of 1974 as of the date of the enactment of this paragraph, and

''(II) such elective deferrals.

''(iv) CONTRIBUTIONS HELD WITHIN AN ESOP.—In the case of contributions (other than elective deferrals and employee contributions) held within an employee stock ownership plan, in the case of the 1st and 2nd plan years referred to in the table in clause (ii), the applicable percentage shall be the greater of the amount determined under clause (ii) or the percentage determined under paragraph (28) (determined as if paragraph (28) applied to a plan described in this paragraph).

''(v) COORDINATION WITH PRIOR ELECTIONS UNDER PARAGRAPH (28).—In any case in which a divestiture of investment in employer securities of any class held by an employee stock ownership plan prior to the effective date of this paragraph was undertaken pursuant to an election under paragraph (28) prior to such date, the applicable percentage (as determined without regard to this clause) in connection with such securities shall be reduced to the extent necessary to account for the amount to which such election applied.

''(H) REGULATIONS.—The Secretary shall prescribe regulations under this paragraph in consultation with the Secretary of Labor.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 401(a)(28) of such Code is amended by adding at the end the following new subparagraph:

''(D) APPLICATION.—This paragraph shall not apply to a plan to which paragraph (35) applies.''.

(B) Section 409(h)(7) of such Code is amended by inserting before the period at the end ''or subparagraph (B) or (C) of section 401(a)(35)''.

(C) Section 4980(c)(3)(A) of such Code is amended by striking ''if—'' and all that follows and inserting ''if the requirements of subparagraphs (B), (C), and (D) are met.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2) and section 108, the amendments made by this section shall apply to plan years beginning after December 31, 2003, and with respect to employer securities allocated to accounts before, on, or after the date of the enactment of this Act.

(2) EXCEPTION.—The amendments made by this section shall not apply to employer securities held by an employee stock ownership plan which are acquired before January 1, 1987.

SEC. 105. PROHIBITED TRANSACTION EXEMPTION FOR THE PROVISION OF INVESTMENT ADVICE.

(a) AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) EXEMPTION FROM PROHIBITED TRANSACTIONS.—Section 408(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)) is amended by adding at the end the following new paragraph:

''(14)(A) Any transaction described in subparagraph (B) in connection with the provision of investment advice described in section 3(21)(A)(ii), in any case in which—

''(i) the investment of assets of the plan is subject to the direction of plan participants or beneficiaries,

''(ii) the advice is provided to the plan or a participant or beneficiary of the plan by a fiduciary adviser in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of plan assets, and

''(iii) the requirements of subsection (g) are met in connection with the provision of the advice.

''(B) The transactions described in this subparagraph are the following:

''(i) the provision of the advice to the plan, participant, or beneficiary;

''(ii) the sale, acquisition, or holding of a security or other property (including any lending of money or other extension of credit associated with the sale, acquisition, or holding of a security or other property) pursuant to the advice; and

''(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of the advice or in connection with a sale, acquisition, or holding of a security or other property pursuant to the advice.''.

(2) REQUIREMENTS.—Section 408 of such Act is amended further by adding at the end the following new subsection:

''(g) REQUIREMENTS RELATING TO PROVISION OF INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—

''(1) IN GENERAL.—The requirements of this subsection are met in connection with the provision of investment advice referred to in section 3(21)(A)(ii), provided to an employee benefit plan or a participant or beneficiary of an employee benefit plan by a fiduciary adviser with respect to the plan in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of amounts held by the plan, if—

''(A) in the case of the initial provision of the advice with regard to the security or other property by the fiduciary adviser to the plan, participant, or beneficiary, the fiduciary adviser provides to the recipient of the advice, at a time reasonably contemporaneous with the initial provision of the advice, a written notification (which may consist of notification by means of electronic communication)—

''(i) of all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property,

''(ii) of any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property,

''(iii) of any limitation placed on the scope of the investment advice to be provided by the fiduciary adviser with respect to any such sale, acquisition, or holding of a security or other property,

''(iv) of the types of services provided by the fiduciary adviser in connection with the provision of investment advice by the fiduciary adviser,

''(v) that the adviser is acting as a fiduciary of the plan in connection with the provision of the advice, and

''(vi) that a recipient of the advice may separately arrange for the provision of advice by another adviser, that could have no material affiliation with and receive no fees or other compensation in connection with the security or other property,

''(B) the fiduciary adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws,

''(C) the sale, acquisition, or holding occurs solely at the direction of the recipient of the advice,

''(D) the compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property is reasonable, and

''(E) the terms of the sale, acquisition, or holding of the security or other property are at least as favorable to the plan as an arm's length transaction would be.

''(2) STANDARDS FOR PRESENTATION OF INFORMATION.—

''(A) IN GENERAL.—The notification required to be provided to participants and beneficiaries under paragraph (1)(A) shall be written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

''(B) MODEL FORM FOR DISCLOSURE OF FEES AND OTHER COMPENSATION.—The Secretary shall issue a model form for the disclosure of fees and other compensation required in paragraph (1)(A)(i) which meets the requirements of subparagraph (A).

''(3) EXEMPTION CONDITIONED ON MAKING REQUIRED INFORMATION AVAILABLE ANNUALLY, ON REQUEST, AND IN THE EVENT OF MATERIAL CHANGE.—The requirements of paragraph (1)(A) shall be deemed not to have been met in connection with the initial or any subsequent provision of advice described in paragraph (1) to the plan, participant, or beneficiary if, at any time during the provision of advisory services to the plan, participant, or beneficiary, the fiduciary adviser fails to maintain the information described in clauses (i) through (iv) of subparagraph (A) in currently accurate form and in the manner described in paragraph (2) or fails—

''(A) to provide, without charge, such currently accurate information to the recipient of the advice no less than annually,

''(B) to make such currently accurate information available, upon request and without charge, to the recipient of the advice, or

''(C) in the event of a material change to the information described in clauses (i) through (iv) of paragraph (1)(A), to provide, without charge, such currently accurate information to the recipient of the advice at a time reasonably contemporaneous to the material change in information.

''(4) MAINTENANCE FOR 6 YEARS OF EVIDENCE OF COMPLIANCE.—A fiduciary adviser referred to in paragraph (1) who has provided advice referred to in such paragraph shall, for a period of not less than 6 years after the provision of the advice, maintain any records necessary for determining whether the requirements of the preceding provisions of this subsection and of subsection (b)(14) have been met. A transaction prohibited under section 406 shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

''(5) EXEMPTION FOR PLAN SPONSOR AND CERTAIN OTHER FIDUCIARIES.—

''(A) IN GENERAL.—Subject to subparagraph (B), a plan sponsor or other person who is a fiduciary (other than a fiduciary adviser) shall not be treated as failing to meet the requirements of this part solely by reason of the provision of investment advice referred to in section 3(21)(A)(ii) (or solely by reason of contracting for or otherwise arranging for the provision of the advice), if—

''(i) the advice is provided by a fiduciary adviser pursuant to an arrangement between the plan sponsor or other fiduciary and the fiduciary adviser for the provision by the fiduciary adviser of investment advice referred to in such section,

''(ii) the terms of the arrangement require compliance by the fiduciary adviser with the requirements of this subsection, and

''(iii) the terms of the arrangement include a written acknowledgment by the fiduciary adviser that the fiduciary adviser is a fiduciary of the plan with respect to the provision of the advice.

''(B) CONTINUED DUTY OF PRUDENT SELECTION OF ADVISER AND PERIODIC REVIEW.—Nothing in subparagraph (A) shall be construed to exempt a plan sponsor or other person who is a fiduciary from any requirement of this part for the prudent selection and periodic review of a fiduciary adviser with whom the plan sponsor or other person enters into an arrangement for the provision of advice referred to in section 3(21)(A)(ii). The plan sponsor or other person who is a fiduciary has no duty under this part to monitor the specific investment advice given by the fiduciary adviser to any particular recipient of the advice.

''(C) AVAILABILITY OF PLAN ASSETS FOR PAYMENT FOR ADVICE.—Nothing in this part shall be construed to preclude the use of plan assets to pay for reasonable expenses in providing investment advice referred to in section 3(21)(A)(ii).

''(6) DEFINITIONS.—For purposes of this subsection and subsection (b)(14)—

''(A) FIDUCIARY ADVISER.—The term 'fiduciary adviser' means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice by the person to the plan or to a participant or beneficiary and who is—

''(i) registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or under the laws of the State in which the fiduciary maintains its principal office and place of business,

''(ii) a bank or similar financial institution referred to in section 408(b)(4) or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1))), but only if the advice is provided through a trust department of the bank or similar financial institution or savings association which is subject to periodic examination and review by Federal or State banking authorities,

''(iii) an insurance company qualified to do business under the laws of a State,

''(iv) a person registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

''(v) an affiliate of a person described in any of clauses (i) through (iv), or

''(vi) an employee, agent, or registered representative of a person described in any of clauses (i) through (v) who satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of the advice.

''(B) AFFILIATE.—The term 'affiliate' of another entity means an affiliated person of the entity (as defined in section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3))).

''(C) REGISTERED REPRESENTATIVE.—The term 'registered representative' of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)) (substituting the entity for the investment adviser referred to in such section).''.

(b) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—

(1) EXEMPTION FROM PROHIBITED TRANSACTIONS.—Subsection (d) of section 4975 of the Internal Revenue Code of 1986 (relating to exemptions from tax on prohibited transactions) is amended—

(A) in paragraph (14), by striking ''or'' at the end;

(B) in paragraph (15), by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following new paragraph:

''(16) any transaction described in subsection (f)(7)(A) in connection with the provision of investment advice described in subsection (e)(3)(B)(i), in any case in which—

''(A) the investment of assets of the plan is subject to the direction of plan participants or beneficiaries,

''(B) the advice is provided to the plan or a participant or beneficiary of the plan by a fiduciary adviser in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of plan assets, and

''(C) the requirements of subsection (f)(7)(B) are met in connection with the provision of the advice.''.

(2) ALLOWED TRANSACTIONS AND REQUIREMENTS.—Subsection (f) of such section 4975 (relating to other definitions and special rules) is amended by adding at the end the following new paragraph:

''(7) PROVISIONS RELATING TO INVESTMENT ADVICE PROVIDED BY FIDUCIARY ADVISERS.—

''(A) TRANSACTIONS ALLOWABLE IN CONNECTION WITH INVESTMENT ADVICE PROVIDED BY FIDUCIARY ADVISERS.—The transactions referred to in subsection (d)(16), in connection with the provision of investment advice by a fiduciary adviser, are the following:

''(i) the provision of the advice to the plan, participant, or beneficiary;

''(ii) the sale, acquisition, or holding of a security or other property (including any lending of money or other extension of credit associated with the sale, acquisition, or holding of a security or other property) pursuant to the advice; and

''(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of the advice or in connection with a sale, acquisition, or holding of a security or other property pursuant to the advice.

''(B) REQUIREMENTS RELATING TO PROVISION OF INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—The requirements of this subparagraph (referred to in subsection (d)(16)(C)) are met in connection with the provision of investment advice referred to in subsection (e)(3)(B), provided to a plan or a participant or beneficiary of a plan by a fiduciary adviser with respect to the plan in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of amounts held by the plan, if—

''(i) in the case of the initial provision of the advice with regard to the security or other property by the fiduciary adviser to the plan, participant, or beneficiary, the fiduciary adviser provides to the recipient of the advice, at a time reasonably contemporaneous with the initial provision of the advice, a written notification (which may consist of notification by means of electronic communication)—

''(I) of all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property,

''(II) of any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property,

''(III) of any limitation placed on the scope of the investment advice to be provided by the fiduciary adviser with respect to any such sale, acquisition, or holding of a security or other property,

''(IV) of the types of services provided by the fiduciary adviser in connection with the provision of investment advice by the fiduciary adviser,

''(V) that the adviser is acting as a fiduciary of the plan in connection with the provision of the advice, and

''(VI) that a recipient of the advice may separately arrange for the provision of advice by another adviser, that could have no material affiliation with and receive no fees or other compensation in connection with the security or other property,

''(ii) the fiduciary adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws,

''(iii) the sale, acquisition, or holding occurs solely at the direction of the recipient of the advice,

''(iv) the compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property is reasonable, and

''(v) the terms of the sale, acquisition, or holding of the security or other property are at least as favorable to the plan as an arm's length transaction would be.

''(C) STANDARDS FOR PRESENTATION OF INFORMATION.—The notification required to be provided to participants and beneficiaries under subparagraph (B)(i) shall be written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

''(D) EXEMPTION CONDITIONED ON MAKING REQUIRED INFORMATION AVAILABLE ANNUALLY, ON REQUEST, AND IN THE EVENT OF MATERIAL CHANGE.—The requirements of subparagraph (B)(i) shall be deemed not to have been met in connection with the initial or any subsequent provision of advice described in subparagraph (B) to the plan, participant, or beneficiary if, at any time during the provision of advisory services to the plan, participant, or beneficiary, the

fiduciary adviser fails to maintain the information described in subclauses (I) through (IV) of subparagraph (B)(i) in currently accurate form and in the manner required by subparagraph (C), or fails—

''(i) to provide, without charge, such currently accurate information to the recipient of the advice no less than annually,

''(ii) to make such currently accurate information available, upon request and without charge, to the recipient of the advice, or

''(iii) in the event of a material change to the information described in subclauses (I) through (IV) of subparagraph (B)(i), to provide, without charge, such currently accurate information to the recipient of the advice at a time reasonably contemporaneous to the material change in information.

''(E) MAINTENANCE FOR 6 YEARS OF EVIDENCE OF COMPLIANCE.—A fiduciary adviser referred to in subparagraph (B) who has provided advice referred to in such subparagraph shall, for a period of not less than 6 years after the provision of the advice, maintain any records necessary for determining whether the requirements of the preceding provisions of this paragraph and of subsection (d)(16) have been met. A transaction prohibited under subsection (c)(1) shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

''(F) EXEMPTION FOR PLAN SPONSOR AND CERTAIN OTHER FIDUCIARIES.—A plan sponsor or other person who is a fiduciary (other than a fiduciary adviser) shall not be treated as failing to meet the requirements of this section solely by reason of the provision of investment advice referred to in subsection (e)(3)(B) (or solely by reason of contracting for or otherwise arranging for the provision of the advice), if—

''(i) the advice is provided by a fiduciary adviser pursuant to an arrangement between the plan sponsor or other fiduciary and the fiduciary adviser for the provision by the fiduciary adviser of investment advice referred to in such section,

''(ii) the terms of the arrangement require compliance by the fiduciary adviser with the requirements of this paragraph,

''(iii) the terms of the arrangement include a written acknowledgment by the fiduciary adviser that the fiduciary adviser is a fiduciary of the plan with respect to the provision of the advice, and

''(iv) the requirements of part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 are met in connection with the provision of such advice.

''(G) DEFINITIONS.—For purposes of this paragraph and subsection (d)(16)—

''(i) FIDUCIARY ADVISER.—The term 'fiduciary adviser' means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice by the person to the plan or to a participant or beneficiary and who is—

''(I) registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or under the laws of the State in which the fiduciary maintains its principal office and place of business,

''(II) a bank or similar financial institution referred to in subsection (d)(4) or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1))), but only if the advice is provided through a trust department of the bank or similar financial institution or savings association which is subject to periodic examination and review by Federal or State banking authorities,

''(III) an insurance company qualified to do business under the laws of a State,

''(IV) a person registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

''(V) an affiliate of a person described in any of subclauses (I) through (IV), or

''(VI) an employee, agent, or registered representative of a person described in any of subclauses (I) through (V) who satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of the advice.

''(ii) AFFILIATE.—The term 'affiliate' of another entity means an affiliated person of the entity (as defined in section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3))).

''(iii) REGISTERED REPRESENTATIVE.—The term 'registered representative' of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)) (substituting the entity for the investment adviser referred to in such section).''.

SEC. 106. STUDY REGARDING IMPACT ON RETIREMENT SAVINGS OF PARTICIPANTS AND BENEFICIARIES BY REQUIRING CONSULTANTS TO ADVISE PLAN FIDUCIARIES OF INDIVIDUAL ACCOUNT PLANS.

(a) STUDY.—As soon as practicable after the date of the enactment of this Act, the Secretary of Labor shall undertake a study of the costs and benefits to participants and beneficiaries of requiring independent consultants to advise plan fiduciaries in connection with individual account plans. In conducting such study, the Secretary shall consider—

(1) the benefits to plan participants and beneficiaries of engaging independent advisers to provide investment and other advice regarding the assets of the plan to persons who have fiduciary duties with respect to the management or disposition of such assets,

(2) the extent to which independent advisers are currently retained by plan fiduciaries,

(3) the availability of assistance to fiduciaries from appropriate Federal agencies,

(4) the availability of qualified independent consultants to serve the needs of individual account plan fiduciaries in the United States,

(5) the impact of the additional fiduciary duty of an independent advisor on the strict fiduciary obligations of plan fiduciaries,

(6) the impact of new requirements (consulting fees, reporting requirements, and new plan duties to prudently identify and contract with qualified independent consultants) on the availability of individual account plans, and

(7) the impact of a new requirement on the plan administration costs per participant for small and mid-size employers and the pension plans they sponsor.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Labor shall report the results of the study undertaken pursuant to this section, together with any recommendations for legislative changes, to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate.

SEC. 107. TREATMENT OF QUALIFIED RETIREMENT PLANNING SERVICES.

(a) IN GENERAL.—Subsection (m) of section 132 of the Internal Revenue Code of 1986 (defining qualified retirement services) is amended by adding at the end the following new paragraph:

''(4) NO CONSTRUCTIVE RECEIPT.—No amount shall be included in the gross income of any employee solely because the employee may choose between any qualified retirement planning services provided by a qualified investment advisor and compensation which would otherwise be includible in the gross income of such employee. The preceding sentence shall apply to highly compensated employees only if the choice described in such sentence is available on substantially the same terms to each member of the group of employees normally provided education and information regarding the employer's qualified employer plan.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 403(b)(3)(B) of such Code is amended by inserting ''132(m)(4),'' after ''132(f)(4),''.

(2) Section 414(s)(2) of such Code is amended by inserting ''132(m)(4),'' after ''132(f)(4),''.

(3) Section 415(c)(3)(D)(ii) of such Code is amended by inserting ''132(m)(4),'' after ''132(f)(4),''.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 108. EFFECTIVE DATES AND RELATED RULES.

(a) IN GENERAL.—Except as otherwise provided in the preceding provisions of this title or in subsections (c) and (d), the amendments made by this Act shall apply with respect to plan years beginning on or after the general effective date.

(b) GENERAL EFFECTIVE DATE.—For purposes of this section, the term ''general effective date'' means the date which is 1 year after the date of the enactment of this Act.

(c) SPECIAL RULE FOR COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act, subsection (a) shall be applied to benefits pursuant to, and individuals covered by, any such agreement by substituting for ''the general effective date'' the date of the commencement of the first plan year beginning on or after the earlier of—

(1) the later of—

(A) the date which is 1 year after the general effective date, or

(B) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after the date of the enactment of this Act), or

(2) the date which is 2 years after the general effective date.

(d) AMENDMENTS RELATING TO INVESTMENT ADVICE.—The amendments made by section 105 shall apply with respect to advice referred to in section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974 or section 4975(c)(3)(B) of the Internal Revenue Code of 1986 provided on or after January 1, 2005.

TITLE II—OTHER PROVISIONS RELATING TO PENSIONS

SEC. 201. AMENDMENTS TO RETIREMENT PROTECTION ACT OF 1994.

(a) TRANSITION RULE MADE PERMANENT.—Section 769(c) of the Retirement Protection Act of 1994 (26 U.S.C. 412 note) is amended—

(1) in the heading, by striking ''TRANSITION''; and

(2) in paragraph (1), by striking ''transition'' and by striking ''for any plan year beginning after 1996 and before 2010''.

(b) SPECIAL RULES.—Paragraph (2) of section 769(c) of the Retirement Protection Act of 1994 is amended to read as follows:

''(2) SPECIAL RULES.—The rules described in this paragraph are as follows:

''(A) For purposes of section 412(l)(9)(A) of the Internal Revenue Code of 1986 and section 302(d)(9)(A) of the Employee Retirement Income Security Act of 1974, the funded current liability percentage for any plan year shall be treated as not less than 90 percent.

''(B) For purposes of section 412(m) of the Internal Revenue Code of 1986 and section 302(e) of the Employee Retirement Income Security Act of 1974, the funded current liability percentage for any plan year shall be treated as not less than 100 percent.

''(C) For purposes of determining unfunded vested benefits under section 4006(a)(3)(E)(iii) of the Employee Retirement Income Security Act of 1974, the mortality table shall be the mortality table used by the plan.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2002.

SEC. 202. REPORTING SIMPLIFICATION.

(a) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR OWNERS AND THEIR SPOUSES.—

(1) IN GENERAL.—The Secretary of the Treasury and the Secretary of Labor shall modify the requirements for filing annual returns with respect to one-participant retirement plans to ensure that such plans with assets of $250,000 or less as of the close of the plan year need not file a return for that year.

(2) ONE-PARTICIPANT RETIREMENT PLAN DEFINED.—For purposes of this subsection, the term ''one-participant retirement plan'' means a retirement plan with respect to which the following requirements are met:

(A) on the first day of the plan year—

(i) the plan covered only one individual (or the individual and the individual's spouse) and the individual owned 100 percent of the plan sponsor (whether or not incorporated), or

(ii) the plan covered only one or more partners (or partners and their spouses) in the plan sponsor;

(B) the plan meets the minimum coverage requirements of section 410(b) of the Internal Revenue Code of 1986 without being combined with any other plan of the business that covers the employees of the business;

(C) the plan does not provide benefits to anyone except the individual (and the individual's spouse) or the partners (and their spouses);

(D) the plan does not cover a business that is a member of an affiliated service group, a controlled group of corporations, or a group of businesses under common control; and

(E) the plan does not cover a business that leases employees.

(3) OTHER DEFINITIONS.—Terms used in paragraph (2) which are also used in section 414 of the Internal Revenue Code of 1986 shall have the respective meanings given such terms by such section.

(4) EFFECTIVE DATE.—The provisions of this subsection shall apply to plan years beginning on or after January 1, 2003.

(b) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR PLANS WITH FEWER THAN 25 EMPLOYEES.—In the case of plan years beginning after December 31, 2004, the Secretary of the Treasury and the Secretary of Labor shall provide for the filing of a simplified annual return for any retirement plan which covers less than 25 employees on the first day of a plan year and which meets the requirements described in subparagraphs (B), (D), and (E) of subsection (a)(2).

SEC. 203. IMPROVEMENT OF EMPLOYEE PLANS COMPLIANCE RESOLUTION SYSTEM.

The Secretary of the Treasury shall continue to update and improve the Employee Plans Compliance Resolution System (or any successor program) giving special attention to—

(1) increasing the awareness and knowledge of small employers concerning the availability and use of the program;

(2) taking into account special concerns and circumstances that small employers face with respect to compliance and correction of compliance failures;

(3) extending the duration of the self-correction period under the Self-Correction Program for significant compliance failures;

(4) expanding the availability to correct insignificant compliance failures under the Self-Correction Program during audit; and

(5) assuring that any tax, penalty, or sanction that is imposed by reason of a compliance failure is not excessive and bears a reasonable relationship to the nature, extent, and severity of the failure.

The Secretary of the Treasury shall have full authority to effectuate the foregoing with respect to the Employee Plans Compliance Resolution System (or any successor program) and any other employee plans correction policies, including the authority to waive income, excise, or other taxes to ensure that any tax, penalty, or sanction is not excessive and bears a reasonable relationship to the nature, extent, and severity of the failure.

SEC. 204. FLEXIBILITY IN NONDISCRIMINATION, COVERAGE, AND LINE OF BUSINESS RULES.

(a) NONDISCRIMINATION.—

(1) IN GENERAL.—The Secretary of the Treasury shall, by regulation, provide that a plan shall be deemed to satisfy the requirements of section 401(a)(4) of the Internal Revenue Code of 1986 if such plan satisfies the facts and circumstances test under section 401(a)(4) of such Code, as in effect before January 1, 1994, but only if—

(A) the plan satisfies conditions prescribed by the Secretary to appropriately limit the availability of such test; and

(B) the plan is submitted to the Secretary for a determination of whether it satisfies such test.

Subparagraph (B) shall only apply to the extent provided by the Secretary.

(2) EFFECTIVE DATES.—

(A) REGULATIONS.—The regulation required by paragraph (1) shall apply to years beginning after December 31, 2004.

(B) CONDITIONS OF AVAILABILITY.—Any condition of availability prescribed by the Secretary under paragraph (1)(A) shall not apply before the first year beginning not less than 120 days after the date on which such condition is prescribed.

(b) COVERAGE TEST.—

(1) IN GENERAL.—Section 410(b)(1) of the Internal Revenue Code of 1986 (relating to minimum coverage requirements) is amended by adding at the end the following:

''(D) In the case that the plan fails to meet the requirements of subparagraphs (A), (B) and (C), the plan—

''(i) satisfies subparagraph (B), as in effect immediately before the enactment of the Tax Reform Act of 1986,

''(ii) is submitted to the Secretary for a determination of whether it satisfies the requirement described in clause (i), and

''(iii) satisfies conditions prescribed by the Secretary by regulation that appropriately limit the availability of this subparagraph.

Clause (ii) shall apply only to the extent provided by the Secretary.''.

(2) EFFECTIVE DATES.—

(A) IN GENERAL.—The amendment made by paragraph (1) shall apply to years beginning after December 31, 2004.

(B) CONDITIONS OF AVAILABILITY.—Any condition of availability prescribed by the Secretary under regulations prescribed by the Secretary under section 410(b)(1)(D) of the Internal Revenue Code of 1986 shall not apply before the first year beginning not less than 120 days after the date on which such condition is prescribed.

(c) LINE OF BUSINESS RULES.—The Secretary of the Treasury shall, on or before December 31, 2004, modify the existing regulations issued under section 414(r) of the Internal Revenue Code of 1986 in order to expand (to the extent that the Secretary determines appropriate) the ability of a pension plan to demonstrate compliance with the line of business requirements based upon the facts and circumstances surrounding the design and operation of the plan, even though the plan is unable to satisfy the mechanical tests currently used to determine compliance.

SEC. 205. EXTENSION TO ALL GOVERNMENTAL PLANS OF MORATORIUM ON APPLICATION OF CERTAIN NONDISCRIMINATION RULES APPLICABLE TO STATE AND LOCAL PLANS.

(a) IN GENERAL.—

(1) Subparagraph (G) of section 401(a)(5) of the Internal Revenue Code of 1986 and subparagraph (H) of section 401(a)(26) of such Code are each amended by striking ''section 414(d))'' and all that follows and inserting ''section 414(d)).''.

(2) Subparagraph (G) of section 401(k)(3) of the Internal Revenue Code of 1986 and paragraph (2) of section 1505(d) of the Taxpayer Relief Act of 1997 (26 U.S.C. 401 note) are each amended by striking ''maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof)''.

(b) CONFORMING AMENDMENTS.—

(1) The heading for subparagraph (G) of section 401(a)(5) of such Code is amended to read as follows: ''GOVERNMENTAL PLANS.—''.

(2) The heading for subparagraph (H) of section 401(a)(26) of such Code is amended to read as follows: ''EXCEPTION FOR GOVERNMENTAL PLANS.—''.

(3) Subparagraph (G) of section 401(k)(3) of such Code is amended by inserting ''GOVERNMENTAL PLANS.—'' after ''(G)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 2003.

SEC. 206. NOTICE AND CONSENT PERIOD REGARDING DISTRIBUTIONS.

(a) EXPANSION OF PERIOD.—

(1) AMENDMENT OF INTERNAL REVENUE CODE.—

(A) IN GENERAL.—Subparagraph (A) of section 417(a)(6) of the Internal Revenue Code of 1986 is amended by striking ''90-day'' and inserting ''180-day''.

(B) MODIFICATION OF REGULATIONS.—The Secretary of the Treasury shall modify the regulations under sections 402(f), 411(a)(11), and 417 of the Internal Revenue Code of 1986 to substitute ''180 days'' for ''90 days'' each place it appears in Treasury Regulations sections 1.402(f)–1, 1.411(a)–11(c), and 1.417(e)–1(b).

(2) AMENDMENT OF ERISA.—

(A) IN GENERAL.—Section 205(c)(7)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1055(c)(7)(A)) is amended by striking ''90-day'' and inserting ''180-day''.

(B) MODIFICATION OF REGULATIONS.—The Secretary of the Treasury shall modify the regulations under part 2 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 to the extent that they relate to sections 203(e) and 205 of such Act to substitute ''180 days'' for ''90 days'' each place it appears.

(3) EFFECTIVE DATE.—The amendments made by paragraphs (1)(A) and (2)(A) and the modifications required by paragraphs (1)(B) and (2)(B) shall apply to years beginning after December 31, 2003.

(b) CONSENT REGULATION INAPPLICABLE TO CERTAIN DISTRIBUTIONS.—

(1) IN GENERAL.—The Secretary of the Treasury shall modify the regulations under section 411(a)(11) of the Internal Revenue Code of 1986 and under section 205 of the Employee Retirement Income Security Act of 1974 to provide that the description of a participant's right, if any, to defer receipt of a distribution shall also describe the consequences of failing to defer such receipt.

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—The modifications required by paragraph (1) shall apply to years beginning after December 31, 2003.

(B) REASONABLE NOTICE.—In the case of any description of such consequences made before the date that is 90 days after the date on which the Secretary of the Treasury issues a safe harbor description under paragraph (1), a plan shall not be treated as failing to satisfy the requirements of section 411(a)(11) of such Code or section 205 of such Act by reason of the failure to provide the information required by the modifications made under paragraph (1) if the Administrator of such plan makes a reasonable attempt to comply with such requirements.

SEC. 207. ANNUAL REPORT DISSEMINATION.

(a) REPORT AVAILABLE THROUGH ELECTRONIC MEANS.—Section 104(b)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1024(b)(3)) is amended by adding at the end the following new sentence: ''The requirement to furnish information under the previous sentence with respect to an employee pension benefit plan shall be satisfied if the administrator

makes such information reasonably available through electronic means or other new technology.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to reports for years beginning after December 31, 2003.

SEC. 208. TECHNICAL CORRECTIONS TO SAVER ACT.

Section 517 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1147) is amended—

(1) in subsection (a), by striking ''2001 and 2005 on or after September 1 of each year involved'' and inserting ''2006 and 2010'';

(2) in subsection (e)(2)—

(A) by striking ''Committee on Labor and Human Resources'' in subparagraph (D) and inserting ''Committee on Health, Education, Labor, and Pensions'';

(B) by striking subparagraph (F) and inserting the following:

''(F) the Chairman and Ranking Member of the Subcommittee on Labor, Health and Human Services, and Education of the Committee on Appropriations of the House of Representatives and the Chairman and Ranking Member of the Subcommittee on Labor, Health and Human Services, and Education of the Committee on Appropriations of the Senate;'';

(C) by redesignating subparagraph (G) as subparagraph (J); and

(D) by inserting after subparagraph (F) the following new subparagraphs:

''(G) the Chairman and Ranking Member of the Committee on Finance of the Senate;

''(H) the Chairman and Ranking Member of the Committee on Ways and Means of the House of Representatives;

''(I) the Chairman and Ranking Member of the Subcommittee on Employer-Employee Relations of the Committee on Education and the Workforce of the House of Representatives; and'';

(3) in subsection (e)(3)(B), by striking ''January 31, 1998'' and inserting ''2 months before the convening of each summit'';

(4) in subsection (f)(1)(C), by inserting '', no later than 60 days prior to the date of the commencement of the National Summit,'' after ''comment'';

(5) in subsection (i)—

(A) by striking ''for fiscal years beginning on or after October 1, 1997,''; and

(B) by adding at the end the following new paragraph:

''(3) RECEPTION AND REPRESENTATION AUTHORITY.—The Secretary is hereby granted reception and representation authority limited specifically to the events at the National Summit. The Secretary shall use any private contributions accepted in connection with the National Summit prior to using funds appropriated for purposes of the National Summit pursuant to this paragraph.''; and

(6) in subsection (k)—

(A) by striking ''shall enter into a contract on a sole-source basis'' and inserting ''may enter into a contract on a sole-source basis''; and

(B) by striking ''in fiscal year 1998''.

SEC. 209. MISSING PARTICIPANTS AND BENEFICIARIES.

(a) IN GENERAL.—Section 4050 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1350) is amended by redesignating subsection (c) as subsection (e) and by inserting after subsection (b) the following new subsections:

''(c) MULTIEMPLOYER PLANS.—The corporation shall prescribe rules similar to the rules in subsection (a) for multiemployer plans covered by this title that terminate under section 4041A.

''(d) PLANS NOT OTHERWISE SUBJECT TO TITLE.—

''(1) TRANSFER TO CORPORATION.—The plan administrator of a plan described in paragraph (4) may elect to transfer the benefits of a missing participant or beneficiary to the corporation upon termination of the plan.

''(2) INFORMATION TO THE CORPORATION.—To the extent provided in regulations, the plan administrator of a plan described in paragraph (4) shall, upon termination of the plan, provide the corporation information with respect to benefits of a missing participant or beneficiary if the plan transfers such benefits—

''(A) to the corporation, or

''(B) to an entity other than the corporation or a plan described in paragraph (4)(B)(ii).

''(3) PAYMENT BY THE CORPORATION.—If benefits of a missing participant or beneficiary were transferred to the corporation under paragraph (1), the corporation shall, upon location of the participant or beneficiary, pay to the participant or beneficiary the amount transferred (or the appropriate survivor benefit) either—

''(A) in a single sum (plus interest), or

''(B) in such other form as is specified in regulations of the corporation.

''(4) PLANS DESCRIBED.—A plan is described in this paragraph if—

''(A) the plan is a pension plan (within the meaning of section 3(2))—

''(i) to which the provisions of this section do not apply (without regard to this subsection), and

''(ii) which is not a plan described in paragraphs (2) through (11) of section 4021(b), and

''(B) at the time the assets are to be distributed upon termination, the plan—

''(i) has one or more missing participants or beneficiaries, and

''(ii) has not provided for the transfer of assets to pay the benefits of all missing participants and beneficiaries to another pension plan (within the meaning of section 3(2)).

''(5) CERTAIN PROVISIONS NOT TO APPLY.—Subsections (a)(1) and (a)(3) shall not apply to a plan described in paragraph (4).''.

(b) CONFORMING AMENDMENTS.—Section 206(f) of such Act (29 U.S.C. 1056(f)) is amended—

(1) by striking ''title IV'' and inserting ''section 4050''; and

(2) by striking ''the plan shall provide that,''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions made after final regulations implementing subsections (c) and (d) of section 4050 of the Employee Retirement Income Security Act of 1974 (as added by subsection (a)), respectively, are prescribed.

SEC. 210. REDUCED PBGC PREMIUM FOR NEW PLANS OF SMALL EMPLOYERS.

(a) IN GENERAL.—Subparagraph (A) of section 4006(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)(A)) is amended—

(1) in clause (i), by inserting ''other than a new single-employer plan (as defined in subparagraph (F)) maintained by a small employer (as so defined),'' after ''single-employer plan,'',

(2) in clause (iii), by striking the period at the end and inserting '', and'', and

(3) by adding at the end the following new clause:

''(iv) in the case of a new single-employer plan (as defined in subparagraph (F)) maintained by a small employer (as so defined) for the plan year, $5 for each individual who is a participant in such plan during the plan year.''.

(b) DEFINITION OF NEW SINGLE-EMPLOYER PLAN.—Section 4006(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)) is amended by adding at the end the following new subparagraph:

''(F)(i) For purposes of this paragraph, a single-employer plan maintained by a contributing sponsor shall be treated as a new single-employer plan for each of its first 5 plan years if, during the 36-month period ending on the date of the adoption of such plan, the sponsor or any member of such sponsor's controlled group (or any predecessor of either) did not establish or maintain a plan to which this title applies with respect to which benefits were accrued for substantially the same employees as are in the new single-employer plan.

''(ii)(I) For purposes of this paragraph, the term 'small employer' means an employer which on the first day of any plan year has, in aggregation with all members of the controlled group of such employer, 100 or fewer employees.

''(II) In the case of a plan maintained by two or more contributing sponsors that are not part of the same controlled group, the employees of all contributing sponsors and controlled groups of such sponsors shall be aggregated for purposes of determining whether any contributing sponsor is a small employer.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plans first effective after December 31, 2003.

SEC. 211. REDUCTION OF ADDITIONAL PBGC PREMIUM FOR NEW AND SMALL PLANS.

(a) NEW PLANS.—Subparagraph (E) of section 4006(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)(E)) is amended by adding at the end the following new clause:

''(v) In the case of a new defined benefit plan, the amount determined under clause (ii) for any plan year shall be an amount equal to the product of the amount determined under clause (ii) and the applicable percentage. For purposes of this clause, the term 'applicable percentage' means—

''(I) 0 percent, for the first plan year.

''(II) 20 percent, for the second plan year.

''(III) 40 percent, for the third plan year.

''(IV) 60 percent, for the fourth plan year.

''(V) 80 percent, for the fifth plan year.

For purposes of this clause, a defined benefit plan (as defined in section 3(35)) maintained by a contributing sponsor shall be treated as a new defined benefit plan for each of its first 5 plan years if, during the 36-month period ending on the date of the adoption of the plan, the sponsor and each member of any controlled group including the sponsor (or any predecessor of either) did not establish or maintain a plan to which this title applies with respect to which benefits were accrued for substantially the same employees as are in the new plan.''.

(b) SMALL PLANS.—Paragraph (3) of section 4006(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)), as amended by section 210(b), is amended—

(1) by striking ''The'' in subparagraph (E)(i) and inserting ''Except as provided in subparagraph (G), the'', and

(2) by inserting after subparagraph (F) the following new subparagraph:

''(G)(i) In the case of an employer who has 25 or fewer employees on the first day of the plan year, the additional premium determined under subparagraph (E) for each participant shall not exceed $5 multiplied by the number of participants in the plan as of the close of the preceding plan year.

''(ii) For purposes of clause (i), whether an employer has 25 or fewer employees on the first day of the plan year is determined by taking into consideration all of the employees of all members of the contributing sponsor's controlled group. In the case of a plan maintained by two or more contributing sponsors, the employees of all contributing sponsors and their controlled groups shall be aggregated for purposes of determining whether the 25-or-fewer-employees limitation has been satisfied.''.

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendments made by subsection (a) shall apply to plans first effective after December 31, 2003.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to plan years beginning after December 31, 2003.

SEC. 212. AUTHORIZATION FOR PBGC TO PAY INTEREST ON PREMIUM OVERPAYMENT REFUNDS.

(a) IN GENERAL.—Section 4007(b) of the Employment Retirement Income Security Act of 1974 (29 U.S.C. 1307(b)) is amended—

(1) by striking ''(b)'' and inserting ''(b)(1)'', and

(2) by inserting at the end the following new paragraph:

''(2) The corporation is authorized to pay, subject to regulations prescribed by the corporation, interest on the amount of any overpayment of premium refunded to a designated payor. Interest under this paragraph shall be calculated at the same rate and in the same manner as interest is calculated for underpayments under paragraph (1).''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to interest accruing for periods beginning not earlier than the date of the enactment of this Act.

SEC. 213. SUBSTANTIAL OWNER BENEFITS IN TERMINATED PLANS.

(a) MODIFICATION OF PHASE-IN OF GUARANTEE.—Section 4022(b)(5) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1322(b)(5)) is amended to read as follows:

''(5)(A) For purposes of this paragraph, the term 'majority owner' means an individual who, at any time during the 60-month period ending on the date the determination is being made—

''(i) owns the entire interest in an unincorporated trade or business,

''(ii) in the case of a partnership, is a partner who owns, directly or indirectly, 50 percent or more of either the capital interest or the profits interest in such partnership, or

''(iii) in the case of a corporation, owns, directly or indirectly, 50 percent or more in value of either the voting stock of that corporation or all the stock of that corporation.

For purposes of clause (iii), the constructive ownership rules of section 1563(e) of the Internal Revenue Code of 1986 shall apply (determined without regard to section 1563(e)(3)(C)).

''(B) In the case of a participant who is a majority owner, the amount of benefits guaranteed under this section shall equal the product of—

''(i) a fraction (not to exceed 1) the numerator of which is the number of years from the later of the effective date or the adoption date of the plan to the termination date, and the denominator of which is 10, and

''(ii) the amount of benefits that would be guaranteed under this section if the participant were not a majority owner.''.

(b) MODIFICATION OF ALLOCATION OF ASSETS.—

(1) Section 4044(a)(4)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1344(a)(4)(B)) is amended by striking ''section 4022(b)(5)'' and inserting ''section 4022(b)(5)(B)''.

(2) Section 4044(b) of such Act (29 U.S.C. 1344(b)) is amended—

(A) by striking ''(5)'' in paragraph (2) and inserting ''(4), (5),'', and

(B) by redesignating paragraphs (3) through (6) as paragraphs (4) through (7), respectively, and by inserting after paragraph (2) the following new paragraph:

''(3) If assets available for allocation under paragraph (4) of subsection (a) are insufficient to satisfy in full the benefits of all individuals who are described in that paragraph, the assets shall be allocated first to benefits described in subparagraph (A) of that paragraph. Any remaining assets shall then be allocated to benefits described in subparagraph (B) of that paragraph. If assets allocated to such subparagraph (B) are insufficient to satisfy in full the benefits described in that subparagraph, the assets shall be allocated pro rata among individuals on the basis of the present value (as of the termination date) of their respective benefits described in that subparagraph.''.

(c) CONFORMING AMENDMENTS.—

(1) Section 4021 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1321) is amended—

(A) in subsection (b)(9), by striking ''as defined in section 4022(b)(6)'', and

(B) by adding at the end the following new subsection:

''(d) For purposes of subsection (b)(9), the term 'substantial owner' means an individual who, at any time during the 60-month period ending on the date the determination is being made—

''(1) owns the entire interest in an unincorporated trade or business,

''(2) in the case of a partnership, is a partner who owns, directly or indirectly, more than 10 percent of either the capital interest or the profits interest in such partnership, or

''(3) in the case of a corporation, owns, directly or indirectly, more than 10 percent in value of either the voting stock of that corporation or all the stock of that corporation.

For purposes of paragraph (3), the constructive ownership rules of section 1563(e) of the Internal Revenue Code of 1986 shall apply (determined without regard to section 1563(e)(3)(C)).''.

(2) Section 4043(c)(7) of such Act (29 U.S.C. 1343(c)(7)) is amended by striking ''section 4022(b)(6)'' and inserting ''section 4021(d)''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to plan terminations—

(A) under section 4041(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1341(c)) with respect to which notices of intent to terminate are provided under section 4041(a)(2) of such Act (29 U.S.C. 1341(a)(2)) after December 31, 2003, and

(B) under section 4042 of such Act (29 U.S.C. 1342) with respect to which proceedings are instituted by the corporation after such date.

(2) CONFORMING AMENDMENTS.—The amendments made by subsection (c) shall take effect on January 1, 2004.

SEC. 214. BENEFIT SUSPENSION NOTICE.

(a) MODIFICATION OF REGULATION.—The Secretary of Labor shall modify the regulation under subparagraph (B) of section 203(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(a)(3)(B)) to provide that the notification required by such regulation in connection with any suspension of benefits described in such subparagraph—

(1) in the case of an employee who returns to service described in section 203(a)(3)(B)(i) or (ii) of such Act after commencement of payment of benefits under the plan, shall be made during the first calendar month or the first 4 or 5-week payroll period ending in a calendar month in which the plan withholds payments, and

(2) in the case of any employee who is not described in paragraph (1)—

(A) may be included in the summary plan description for the plan furnished in accordance with section 104(b) of such Act (29 U.S.C. 1024(b)), rather than in a separate notice, and

(B) need not include a copy of the relevant plan provisions.

(b) EFFECTIVE DATE.—The modification made under this section shall apply to plan years beginning after December 31, 2003.

SEC. 215. STUDIES.

(a) MODEL SMALL EMPLOYER GROUP PLANS STUDY.—As soon as practicable after the date of the enactment of this Act, the Secretary of Labor, in consultation with the Secretary of the Treasury, shall conduct a study to determine—

(1) the most appropriate form or forms of—

(A) employee pension benefit plans which would—

(i) be simple in form and easily maintained by multiple small employers, and

(ii) provide for ready portability of benefits for all participants and beneficiaries,

(B) alternative arrangements providing comparable benefits which may be established by employee or employer associations, and

(C) alternative arrangements providing comparable benefits to which employees may contribute in a manner independent of employer sponsorship, and

(2) appropriate methods and strategies for making pension plan coverage described in paragraph (1) more widely available to American workers.

(b) MATTERS TO BE CONSIDERED.—In conducting the study under subsection (a), the Secretary of Labor shall consider the adequacy and availability of existing employee pension benefit plans and the extent to which existing models may be modified to be more accessible to both employees and employers.

(c) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Labor shall report the results of the study under subsection (a), together with the Secretary's recommendations, to the Committee on Education and the Workforce and the Committee on Ways and Means of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate. Such recommendations shall include one or more model plans described in subsection (a)(1)(A) and model alternative arrangements described in subsections (a)(1)(B) and (a)(1)(C) which may serve as the basis for appropriate administrative or legislative action.

(d) STUDY ON EFFECT OF LEGISLATION.—Not later than 5 years after the date of the enactment of this Act, the Secretary of Labor shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report on the effect of the provisions of this Act and title VI of the Economic Growth and Tax Relief Reconciliation Act of 2001 on pension plan coverage, including any change in—

(1) the extent of pension plan coverage for low and middle-income workers,

(2) the levels of pension plan benefits generally,

(3) the quality of pension plan coverage generally,

(4) workers' access to and participation in pension plans, and

(5) retirement security.

SEC. 216. INTEREST RATE RANGE FOR ADDITIONAL FUNDING REQUIREMENTS.

(a) IN GENERAL.—Subclause (III) of section 412(l)(7)(C)(i) of the Internal Revenue Code of 1986 is amended—

(1) by striking ''2002 or 2003'' in the text and inserting ''2001, 2002, or 2003'', and

(2) by striking ''2002 AND 2003'' in the heading and inserting ''2001, 2002, AND 2003''.

(b) SPECIAL RULE.—Subclause (III) of section 302(d)(7)(C)(i) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082(d)(7)(C)(i)) is amended—

(1) by striking ''2002 or 2003'' in the text and inserting ''2001, 2002, or 2003'', and

(2) by striking ''2002 AND 2003'' in the heading and inserting ''2001, 2002, AND 2003''.

(c) PBGC.—Subclause (IV) of section 4006(a)(3)(E)(iii) of such Act (29 U.S.C. 1306(a)(3)(E)(iii)) is amended to read as follows—

''(IV) In the case of plan years beginning after December 31, 2001, and before January 1, 2004, subclause (II) shall be applied by substituting '100 percent' for '85 percent' and by substituting '115 percent' for '100 percent'. Subclause (III) shall be applied for such years without regard to the preceding sentence. Any reference to this clause or this subparagraph by any other sections or subsections (other than sections 4005, 4010, 4011 and 4043) shall be treated as a reference to this clause or this subparagraph without regard to this subclause.''.

(d) EFFECTIVE DATE.—

(1) GENERAL RULE.—Subject to paragraph (2), the amendments made by this section shall take effect as if included in the amendments made by section 405 of the Job Creation and Worker Assistance Act of 2002.

(2) ELECTION.—The plan sponsor or plan administrator of a plan may elect whether to have the amendments made by subsections (a) and (b) apply. Such election shall be made in such manner and at such time as the Secretary of the Treasury or his delegate may prescribe and,

once made, may not be revoked. An election to apply such amendments shall not be treated as a prohibited change in actuarial assumptions for purposes of reports required to be filed with the Secretary of Labor, the Secretary of Treasury, or the Pension Benefit Guaranty Corporation.

TITLE III—GENERAL PROVISIONS

SEC. 301. PROVISIONS RELATING TO PLAN AMENDMENTS.

(a) IN GENERAL.—If this section applies to any pension plan or contract amendment—

(1) such pension plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in subsection (b)(2)(A), and

(2) except as provided by the Secretary of the Treasury, such pension plan shall not fail to meet the requirements of section 411(d)(6) of the Internal Revenue Code of 1986 and section 204(g) of the Employee Retirement Income Security Act of 1974 by reason of such amendment.

(b) AMENDMENTS TO WHICH SECTION APPLIES.—

(1) IN GENERAL.—This section shall apply to any amendment to any pension plan or annuity contract which is made—

(A) pursuant to any amendment made by this Act or by title VI of the Economic Growth and Tax Relief Reconciliation Act of 2001, or pursuant to any regulation issued by the Secretary of the Treasury or the Secretary of Labor under this Act or such title VI, and

(B) on or before the last day of the first plan year beginning on or after January 1, 2006.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this paragraph shall be applied by substituting ''2008'' for ''2006''.

(2) CONDITIONS.—This section shall not apply to any amendment unless—

(A) during the period—

(i) beginning on the date the legislative or regulatory amendment described in paragraph (1)(A) takes effect (or in the case of a plan or contract amendment not required by such legislative or regulatory amendment, the effective date specified by the plan), and

(ii) ending on the date described in paragraph (1)(B) (or, if earlier, the date the plan or contract amendment is adopted),

the plan or contract is operated as if such plan or contract amendment were in effect; and

(B) such plan or contract amendment applies retroactively for such period.

□ 1300

The SPEAKER pro tempore (Mr. SHIMKUS). After 1 hour and 20 minutes of debate on the bill, as amended, it shall be in order to consider a further amendment printed in House Report 108–98, if offered by the gentleman from California (Mr. GEORGE MILLER), or his designee, which shall be considered read, and shall be debatable for 1 hour, equally divided and controlled by the proponent and an opponent.

The gentleman from Ohio (Mr. BOEHNER), the gentleman from California (Mr. GEORGE MILLER), the gentleman from California (Mr. THOMAS), and the gentleman from California (Mr. MATSUI) each will control 20 minutes of debate on the bill.

The Chair recognizes the gentleman from Ohio (Mr. BOEHNER).

GENERAL LEAVE

Mr. BOEHNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 1000.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. BOEHNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, last year the Congress responded to the Enron and Global Crossing financial collapses by passing bipartisan legislation to strengthen worker retirement security and enhance corporate responsibility. And thanks largely to the work of the gentleman from Ohio (Mr. OXLEY) and a bipartisan team of legislators, President Bush signed into law corporate accountability legislation that holds companies to the highest standards of auditor independence and ethics for America's investors.

But on the issue of pension security, as the chart shows, we have got some unfinished business yet to complete. Last year the House responded quickly to these corporate failures by passing the Pension Security Act, the comprehensive pension protection bill backed by President Bush that would give millions of Americans new tools to help them better manage and expand their retirement security. We passed the bill with significant bipartisan support, with 46 Democrats joining 209 Republicans in supporting the bill. Unfortunately, the Senate did not act on any pension reform legislation last year.

Before I talk about the protections included in the bill, I am proud to say that two key Pension Security Act provisions were signed into law last summer as part of the Sarbanes-Oxley corporate accountability law. These provisions bar company insiders from selling their own stock during blackout periods when workers cannot make changes to their own accounts and to require companies to give 30 days' advanced notice before a blackout period would begin.

These provisions give workers parity with corporate executives and should provide workers with additional security of knowing that Congress is acting to better protect them. But we have more work to do.

Let us be very clear. Worker retirement savings remain vulnerable to corporate meltdowns today, and it should not take another Enron or WorldCom for Congress to act on bipartisan pension protections. That is why we are here today. The gentleman from Texas (Mr. SAM JOHNSON) and I introduced the Pension Protection Act because workers desperately need access to professional investment advice and the ability to diversify their 401(k) savings and other safeguards to help them enhance their retirement security, as this chart shows us.

Enron barred workers from selling company stock until age 50; and as a result, thousands of Enron employees watched helplessly as their retirement savings were lost. The Pension Security Act gives workers new freedoms to sell their company stock within 3 years. This is a dramatic change that gives workers unprecedented control over their retirement accounts and personal savings.

Today, the vast majority of American workers receive no investment advice on how best to structure their 401(k) retirement plans, and most cannot afford to pay for it on their own, like company executives can. Not surprisingly, Enron, WorldCom, Global Crossing, and others did not provide their workers with access to professional investment advice. This type of investment guidance would have alerted these workers to the need to diversify their accounts and enabled many of them to have preserved their retirement savings.

An Enron executive acknowledged before our committee that she diversified out of Enron stock before it collapsed and saved hundreds of thousands of dollars. Why are we denying rank-and-file employees the same opportunity to receive access to high-quality investment advice? And the answer to that is quite obvious. We should not be.

The Pension Security Act changes outdated Federal rules and encourages employers to provide their workers with access to this type of advice. With the 30-day blackout protection now the law of the land, investment advice becomes even more critical for employees who cannot make changes to their 401(k) accounts during a company-imposed blackout period. Importantly, the bill includes new fiduciary and disclosure protections to ensure that workers receive quality advice that is solely in their best interests. The average investor will have much more protection under our bill than under current law.

The bill also requires companies to give workers quarterly benefits statements that include information about accounts, including the value of their assets, their right to diversify, and the importance of maintaining a diverse portfolio. And lastly, the bill empowers workers to hold company insiders accountable for abuses by clarifying that companies are responsible for workers' savings during blackout periods.

Congress should take action to protect Americans' retirement benefits, not endanger them. On a bipartisan basis, Congress has rejected extreme proposals, such as efforts to place arbitrary caps on company stock, that could jeopardize Americans' retirement security or spell the death of 401(k) accounts altogether. The bill before us is a balanced one that protects workers, but does not jeopardize the willingness of employers to offer retirement plans to their employees.

American workers deserve the security of knowing that their savings will be there when they retire. This bill could have made a real difference for the workers at WorldCom or Global Crossing or Enron. Current pension laws are simply outdated, and we have a responsibility to change that.

I want to thank the gentleman from Texas (Mr. SAM JOHNSON), my colleague and friend, who has once again

proven instrumental in moving this issue forward here in the House, and I would also like to thank the gentleman from California (Chairman THOMAS) on the Committee on Ways and Means for their cooperation in helping us bring this bill to the floor today.

Mr. Speaker, I include the following letters for the RECORD:

HOUSE OF REPRESENTATIVES, COMMITTEE ON EDUCATION AND THE WORKFORCE,
Washington, DC, May 7, 2003.

Hon. WILLIAM M. THOMAS,
Chairman, Committee on Ways and Means, Longworth House Office Building, Washington, DC.

DEAR CHAIRMAN THOMAS: Thank you for your May 6, 2003 letter regarding H.R. 1000, the ''Pension Security Act of 2003,'' which was referred to the Committee on Education and the Workforce and in addition the Committee on Ways and Means. The Education and the Workforce Committee ordered the bill favorably reported on March 6, 2003 and I filed the report on March 18, 2003, House Report 108–43. I thank you for working with me, specifically regarding the provisions amending the Internal Revenue Code. While these provisions are within the sole jurisdiction of the Committee on Ways and Means, I appreciate your willingness to work with me in moving H.R. 1000 forward without the need for additional legislative consideration by your Committee.

I agree that this procedural route should not be construed to prejudice the jurisdictional interest and prerogatives of the Committee on Ways and Means on these provisions or any other similar legislation and will not be considered as precedent for consideration of matters of jurisdictional interest to your Committee in the future.

I thank you for working with me regarding this matter and look forward to continuing our work and cooperation on this bill and similar legislation. This letter and your response will be included in the Congressional Record during the floor consideration of this bill. If you have questions regarding this matter, please do not hesitate to call me.

Sincerely,

JOHN BOEHNER,
Chairman.

COMMITTEE ON WAYS AND MEANS,
Washington, DC, May 6, 2003.

Hon. JOHN BOEHNER,
Chairman, Committee on Education and the Workforce, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN BOEHNER: I am writing you concerning H.R. 1000, the ''Pension Security Act of 2003,'' which was sequentially referred to the Committee on Ways and Means until Friday, May 9, 2003.

As you know, the Committee on Ways and Means has jurisdiction over matters concerning the Internal Revenue Code. However, in order to expedite this legislation for floor consideration, we will not take action on this particular proposal. This is being done with the understanding that it does not in any way prejudice the Committee with respect to the appointment of conferees or its jurisdictional prerogatives on this or similar legislation.

I would appreciate your response to this letter, confirming this understanding with respect to H.R. 1000, and would ask that a copy of our exchange of letters on this matter be included in the Congressional Record during floor consideration.

Best regards,

BILL THOMAS,
Chairman.

Mr. BOEHNER. Mr. Speaker, I reserve the balance of my time.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield myself 8 minutes.

Mr. Speaker, today we will have a choice about what to do on behalf of America's future retirees, the employees of America's corporations and the protection of their pensions. We can do, as has been suggested in the Republican bill, a bill that essentially does nothing for retirees and for employees. What it says is that employees should be offered advice, and then it also suggests that that advice can be conflicted, it can be biased, it can be compromised, because under the current law, if we are given investment advice, we cannot be given conflicted advice.

And yet in the wake of Enron and Global Crossing, the answer to the Republicans is to change the current law to allow advice to be given to employees about their retirement futures but to allow that advice to be conflicted, to allow that advice to be conflicted by the very same institutions that just recently settled for $1.4 billion because they had offered conflicted advice and bad advice to their clients. $1.4 billion, that is what those companies agreed to pay. That does not even begin to speak to the hundreds of billions of dollars that the shareholders lost, that employees lost in their mutual funds, their retirement plans because of those conflicts and that essentially criminal behavior. Yes, the deal was struck for $1.4 billion.

Now along comes the Republicans 2 years after Enron, and they say we are going to give them the right to have advice, but that advice gets to be conflict. How tone deaf can one be? How shocked will the American public be when they find out they took their retirement plans and put them exactly in the hands of people who just copped a plea for a billion and a half dollars for giving people bad advice, maybe illegal advice, almost criminal activity, if the Members will. The Republicans' answer is to take America's retirees and turn them over to those firms.

One has to fail to understand what America saw after Enron, what they saw after the bust in the stock market of their retirement plans being depleted, the same kind of outrage that Americans felt when they saw the CEOs and executive officers of American Airlines guarantee their pensions at the same time they were negotiating several billions in givebacks from pilots and flight attendants and workers. They were shocked when they heard this. So shocked and so bad was the reaction, that the CEO of American Airlines had to resign, and they had to give back their compensation package.

Delta Airlines, going through givebacks of billions of dollars from their workers, secures and guarantees their compensation and pension for the CEOs, where former Delta executives, corporate executives, write Delta and say it is a shameless act, an embarrassing act that they would do this. And yet today, after all of those actions, after that public response to that failure to protect the employees, the reaction of the Congress is to essentially do nothing.

But the Democrats offer a different alternative because I think we are listening to the public and to the employees. Yes, pensions is a dull subject. It has not captured the imagination of all the politicians. But the fact of the matter is it has moved from the back pages of the business section to the cover of every major business magazine and every major business; journal, and Fortune Magazine got it about right and that is the oink factor. How far will these corporate executives go? How far will these pigs go at the trough to grab hold of the assets of a corporation at the same time that they are letting their employees go down the tubes? Yes, it is the oink factor. It is CEO pay, it is guaranteed pension plans.

These captains of capitalists, these crusaders of the capitalist system, what do they want out of the system? They want a guarantee that no matter if the company goes bankrupt, no matter if they run the company into the ground, no matter if the company is successful, they want a guarantee that they will be protected financially forever into the future. That is what they wanted at American Airlines. That is what they wanted at Delta Airlines. That is what they wanted at Enron.

□ 1315

Today, the Republican bill is silent on that greed, on that oink factor.

But the Democratic bill offers something different to the Members of this House, who have heard from their constituents about the devastation of their retirement plans. There is none of us in this House that have not gone to a picnic, have not gone to a family gathering, have not gone to a graduation where people have not said that they are postponing their retirement because the retirement plan is not all they thought it would be, who say their spouse is going to have to work a little longer than they thought, who thought the place they were going to retire to in another State or in the country is not available to them any longer because their retirement plans have been devastated because of the activities of so many corporations.

Today we have a chance to take the oink, to take the oink, out of this pension system. We will be given the opportunity to vote on a substitute to where the problem is when executives loot, as the Delta people tried to loot the pension plan of the Delta workers, but to guarantee and insure their own pension plans. The Republican answer is oink. The answer in the Democratic bill is equity for employees.

As the President said at the beginning of the Enron scandal, what is good for the captain is good for the sailor. But the Republicans in Congress do

not think so, and the Delta executives did not think so 2 years later, where executives lie to their employees and do not provide full disclosure about what the executives are doing with the corporate assets and with the pension assets. Once again, there is nothing in their bill, just a big oink for those executives. We require full disclosure for those employees.

With regard to the conflicts of interest on investment advice, the heart of the Republican bill is to provide that conflicted investment advice to flow to those employees; not independent investment counselors, but the very people who will be earning commissions and fees from the investment of those funds.

The question is, are the American public and employees not entitled to better? These are the same people who will allow corporate executives to dedicate hundreds of thousands of dollars to giving investment advice of all different kinds to the executives of those corporations, but do not want to give that kind of advice or help those people out with respect to advice for the employees.

Finally, with regard to older workers, now with hundreds of companies poised to move from a defined benefit plan to a cash balance plan, where the shorthand is this, that older workers in their fifties who have been with companies 10 or 15 years stand to lose 30 to 50 percent of their retirement assets. This is not speculation, this is what happened last time they did this. We have a bar on them doing that again. This administration wants to remove that bar.

There are hundreds of corporations who are poised to make this conversion, and those employees will lose those pension assets. If you are 50 or 55 years old, there is no place you can go to make that up. But the company thinks that they can loot your pension assets to help out their bottom line.

So there is a stark contrast to be offered to the Members of Congress. There is a stark contrast to be offered to the workers of this country about the protection and the security of America's pensions, about the protection and the security, because that is the issue here today. It is not whether or not employees should have access to conflicted information. That is of no real value to those employees.

Mr. BOEHNER. Mr. Speaker, I am pleased to yield 2 minutes to the gentlewoman from Tennessee (Mrs. BLACKBURN), a member of our committee.

Mrs. BLACKBURN. Mr. Speaker, today Congress can take action to give employees more options in how to manage their 401(k)s and other investment plans. H.R. 1, the Pension Security Act, includes important financial safeguards and new disclosure protections for America's workers. It will help ensure that employees receive the advice they need to plan and invest for their future, and it provides Americans the power they need and deserve to manage their retirement funds.

This bill helps American workers in three important ways: First, it provides companies with guidelines on how to advise workers about investing. To enhance investment plan protections, this bill requires that financial advisers let people know that they have the right to third-party advisers, enabling employees to get the advice that they need. Today we are giving employees the power to choose alternative advisers.

In addition, H.R. 1000 works to provide the educational tools for employees who are investing in the companies they are working for. It significantly improves an employee's access to information regarding their accounts by requiring that they be provided with quarterly statements. By educating America's workers on investing, they will be better able to plan for their own retirement.

Third, this legislation helps make it clear to employees that diversifying their investments is absolutely essential. Each quarterly statement will reiterate the point. Too many people are unaware of the risks they take by holding large portions of stock in a single company.

Most employers want to do right by their employees, but there are exceptions, either by accident or gross negligence. The tools of advice, education and diversification, all of which H.R. 1000 provides for, will enable employees to make informed decisions about their investments and their 401(k)s. This bill recognizes that no one will guard their financial future as well as they will do for themselves.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 4 minutes to the gentleman from Massachusetts (Mr. TIERNEY), a member of the committee.

Mr. TIERNEY. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, I rise today in opposition to this bill, the so-called Pension Security Act. I cannot help but be struck by a sense of deja vu, because it was just about a year ago today that the majority brought a similar bill to the floor with the same inadequate, harmful political fig leaf for their dismal record, just covering that dismal record on their retirement security.

Republicans have ignored the problems brought to light by last year's scandals and by all the scandals in the 13 months since that period of time. This legislation does address those dangers and challenges and uncertainties that threaten the retirement security of America's workers. In some cases it actually rolls back those protections.

For example, the bill opens up a whole new dangerous loophole that allows for self-interested investment advice to be provided to employees. For the first time since ERISA was enacted almost three decades ago, investment firms can be permitted to serve as both the principal financial adviser and the investment managers to employees.

The bill would permit investment advisers to recommend their firm's products and earn additional fees on those recommended products if they just disclose the fact that they are in conflict. It does not require access to independent advice, nor does it assure any independent oversight. Conflicts between the adviser's profits and the fiduciary duty to the worker would be explicitly authorized.

The rollback of these critical protections to workers is an act that flies in the face of the past year and a half of corporate scandals. On April 27, the Securities and Exchange Commission and New York Attorney General's office reached a $1.4 billion settlement with the 10 largest Wall Street firms. Among other things, it will, for the first time, require independent investment research to be provided to investors.

This settlement was based on mountains of evidence that the investment advice that major firms were providing to investors was corrupted by conflicts of interest. This costs investors billions of dollars through poor decisions tainted by their adviser's self-dealing.

The very same firms covered by this settlement have demonstrated that they felt no responsibility to the investing company, only to their profit margins. They are the same firms who have demonstrated that if a conflict is possible, they will exploit it, and even if a conflict is illegal, they will exploit it, and they will be explicitly authorized to have that conflicted advice presented under this bill.

There are other problems with this bill. It allows for the conversion of defined benefit plans to less generous cash balance plans, as just mentioned by my colleague from California. The majority actually voted down an amendment in committee to add protections for workers on that aspect.

Further, this legislation leaves in place practices that Enron and WorldCom and other companies that caused unwitting workers to lose billions of dollars benefited from.

There are three examples. The bill continues to lock employees into company-matched stock for 3 years after the contributions have been made; it fails to require companies to provide notice to employees that executives are dumping the company's stock, which should be a key indicator to workers that may wish to divest; and it also continues special treatment to company executive pensions at the expense of rank-and-file members.

Mr. Speaker, we should put what is happening today into context. This debate today is not just about pension security, just like last week's debate was not just about taxes. This is about an arrogance of power by this majority. While our economy struggles, and while families across America watch helplessly as their retirement savings dwindle away as a result of corporate greed and mismanagement, while health care costs soar to ever higher rates, while prescription drug prices rise at five times the rate of inflation, the

Republican leadership in this House can still be counted on to protect the interest of corporate moguls and wealthy special interests at the expense of hard-working American families.

There is something wrong when a party uses Enron and investment scandals of Wall Street as justification for rolling back pension protections for American workers. There is something wrong when a party uses the economic misery of regular Americans to cut the taxes of the super-rich. And there is something wrong when the majority uses the crisis of skyrocketing prescription drug prices to privatize Medicare as a favor to the insurance industry.

This bill exploits the suffering of many to reward the few. It is a pattern in this House, Mr. Speaker, and I urge my colleagues to oppose it.

Mr. BOEHNER. Mr. Speaker, I yield 5 minutes to the gentleman from Texas (Mr. SAM JOHNSON), chairman of the Subcommittee on Employer-Employee Relations.

(Mr. SAM JOHNSON of Texas asked and was given permission to revise and extend his remarks.)

Mr. SAM JOHNSON of Texas. Mr. Speaker, I thank the chairman for yielding me time.

Mr. Speaker, I am glad you all asked us to look at this, because I want to help Americans who are working hard and saving for their retirement. They deserve more information about what is happening to their retirement plans. They deserve help in making financial decisions that can often be overwhelming. They deserve the right to diversify their money in their retirement accounts.

The Pension Security Act that we are debating today lets all Americans do all this. Unfortunately, we have been here and done this before. We passed this bill in the last Congress, but it went to the other side of the Capitol, where nothing happened. Hopefully it will be enacted this year.

The Pension Security Act gives employees the freedom to diversify their retirement savings, but does not force them to do so. Free enterprise works best when individuals have the freedom to put their money where their mouths are.

It gives employees information on the importance of diversification, but, ultimately, the individual knows their own situation better than some arbitrary rule that Congress might have imposed.

I have heard from many constituents about the fact that they do not want the government imposing caps on how much company stock they can hold. The Pension Security Act not only gives employees the freedom to diversify, but it also gives them a new tool to help them, and, more importantly, to help them understand their investments. Employees will be able to receive professional advice so they can turn to a fiduciary adviser who can help them decide what the right investments are for their individual situation.

During the drafting of this bill about 1 year ago, we worked very hard to be sure that the employee-owned companies would not be required to set aside reserves to buy back company stock that might have been subject to the diversification requirements. The diversification requirements for privately held ESOP companies would have been a direct call on capital, requiring these companies to set aside cash or obligate lines of credit for the possible repurchase of shares, rather than for building the business. I am glad we dealt with this issue fairly and quickly.

As chairman of the Subcommittee on Employer-Employee Relations, I want to add that the bill is simply reiterating current law regarding fiduciary liability during a blackout. The concept of a blackout was written into ERISA last year as part of the Corporate Accountability Act. The provision in this bill is meant as a tag-along with those changes. Employers are still not liable for market swings during a blackout period, as long as they provide advance notice of a blackout, they have a legitimate reason for doing it, and generally acting as a good fiduciary during these periods.

This bill also contains several ERISA provisions that have been blocked by arcane Senate rules from moving forward in a tax bill. This bill will expand the missing participants program at the Pension Benefits Guaranty Corporation so that 401(k) plan participants can be reunited with their money if their company ceases to exist.

The bill also simplifies the annual reports that pension plans are required to file with the Department of Labor. The new form should be only one page long, and is a step in the right direction to cutting red tape that has caused so many small businesses to simply terminate their retirement plans. Small business owners have told me that this change could go a long way to reducing the cost of maintaining a retirement plan.

There are several other good changes in this bill, but I just want to mention two more small business provisions that are long overdue.

□ 1330

One of them would reduce the PBGC insurance premium for the new defined benefit plan and for small plans in order to reduce costs associated with setting up pension plans. Also, current law prohibits small business owners who pay insurance premiums to PBGC from receiving retirement benefits if the business fails. We reversed that.

So this bill, in effect, is going to help Americans prepare for their financial security in retirement. It must pass. It needs to be signed into law.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 4 minutes to the gentleman from New Jersey (Mr. ANDREWS), the senior Democrat on the subcommittee.

(Mr. ANDREWS asked and was given permission to revise and extend his remarks.)

Mr. ANDREWS. Mr. Speaker, I thank the gentleman from California for yielding me this time. I rise in strong opposition to the bill that is on the floor.

There have been two trends taking place in American life in recent months and years. The first is an outbreak of conflict of interest in the financial world of America. A few days ago, the attorney general of New York State, together with other law enforcement officials, announced a global settlement against a large number of investment firms because those firms were rather routinely giving advice that was conflicted and, therefore, not in the best interests of investors. The common practice was that the investment banking side of the firm was out hawking certain securities and trying to sell certain deals. And then the advice side of the firm was telling the retail clients of the firm to buy into those very same deals. It became obvious that the advice being given by these financial houses was not in the best interests of the investor; it was in the best interests of the financial house.

It was a scandal that has rocked Wall Street to its foundations. It has caused some significant problems in the market. It caused this Congress to take significant steps in the Sarbanes-Oxley legislation of last year. It was an unwelcome intrusion into the marketplace of American finance.

The second trend is that more and more Americans have become their own board of trustees for their own pension fund. Twenty-five years ago, the way most people's pensions were is that they worked for an employer, the employer put money into a pension fund, there was a board of directors or board of trustees for that pension fund that invested the money, and, when you retired, every month you got a check based upon how much money you were entitled to under that plan.

In recent years many employers have shifted to self-directed accounts. Commonly these are known as 401(k)s, where instead of the employer deciding how the money is invested, the constituent, the individual, decides how the money is invested, and, in effect, our constituents become their own board of trustees for their own pension plans. There is today $1.8 trillion of American pension money invested in these 401(k)s.

Now, one would think that when we have a trend of tremendous conflict of interest problems in the financial industry and a huge jump in the number of pension dollars in self-directed accounts that the House would be about the business of trying to find ways to assure that we eliminated any possibility for conflict of interest when people give advice to pensioners and workers as to how to invest their pension funds. In fact, since 1974, that has been

the law. It is illegal under present law for a conflicted adviser to give advice.

The bill before the House today lifts that prohibition and makes it legal. In other words, what the attorney general of New York and the securities agencies of the Federal Government labored so hard to make unlawful in the rest of the economy, the House is now trying to make lawful with respect to people's pension funds.

Common sense tells us we want to go in the other direction. We want to reduce or eliminate conflicts of interest in investment advice. This bill authorizes and legalizes those conflicts of interest. It makes no sense. If one liked the Enron scandal, one will love what will happen if conflicted, unfettered investment advice visits the $1.8 trillion of America's pensions held in these funds.

Mr. Speaker, this bill should be rejected, and the Democratic substitute that we will debate later should be adopted.

Mr. BOEHNER. Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from California (Mr. MCKEON), the chairman of the Subcommittee on 21st Century Competitiveness.

Mr. MCKEON. Mr. Speaker, I rise in strong support of this Pension Security Act of 2003, and I commend the gentleman from Ohio (Chairman Boehner) and the subcommittee chairman, the gentleman from Texas (Mr. JOHNSON), for their leadership in getting this bill to the floor to help America's workers.

In the wake of the Enron and WorldCom scandals, this Congress must ensure that innocent, hard-working, dedicated employees have safeguards to protect their savings. When Enron stock was dropping, its employees had no other option but to ride its tidal wave until it ran aground and crashed.

As a former small business owner, I understand the desires of an employer to provide his or her employees with good, stable pension plans to ensure a comfortable retirement. By providing sound retirement benefits, employees' productivity increases through the peace of mind that they will have a financial future long after they retire.

With the ever-changing economy and the differing retirement plans that are available to employees, it is the responsibility of an employer to ensure that his or her workers are given the freedom to direct the course of their financial future. We must increase workers' access to financial advice to help them choose the best investment for their individual needs.

It is for this reason that I am pleased that the Pension Security Act will allow investment advisers to work in a purely fiduciary capacity to help employees understand the complexities, advantages, and opportunities in diversification of their investment pensions. If Enron workers had had the same sound advice from unbiased, trustworthy sources, many former employees would not have incurred the great financial losses that most employees have had to undergo as a result of the company's failure.

When large corporations go bankrupt for whatever reason, whether it be through corruption or through innocent financial problems, management is generally more insulated from the blow than the employees because of their freedom to invest and their access to information. This bill will simply give employees the same benefits as management: the flexibility to make individual decisions with their money. They should not be penalized for the failure of management or the company.

This bill will greatly alleviate the problems illustrated by Enron and WorldCom and fill a gaping hole, and I urge my colleagues to support this bill.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 2 minutes to the gentleman from Arizona (Mr. GRIJALVA), a member of the committee.

Mr. GRIJALVA. Mr. Speaker, I thank the gentleman from California for yielding me this time.

I rise today in opposition to H.R. 1000 and in support of the Pension Fairness Act. As has been stated before, the collapse of WorldCom, Enron, Global Crossing, and other corporate abuses we have seen in the news has highlighted the need for critical pension reform to eliminate abuses and to protect workers. The Pension Fairness Act, the Democratic substitute, deals with meaningful reform and protections from abuse against workers. I would like to take the 1 minute to compare the Democratic substitute and H.R. 1000.

The Democratic substitute gives workers the right to independent, unbiased investment advice. H.R. 1000 does not. In fact, it creates the opposite effect.

The Democratic substitute provides workers with a voice in running defined contribution plans. H.R. 1000 leaves decision-making in the hands of corporate executives.

The Democratic substitute gives workers notice when executives are selling company stocks. H.R. 1000 does not.

The Democratic substitute protects older workers when a company converts from traditional pension plans to a cash balance plan. H.R. 1000 does not.

The Democratic substitute requires that executive pensions be subject to the same pension rules as rank-and-file workers. H.R. 1000 offers no such fairness.

Mr. Speaker, H.R. 1000 is unfair and destined for abuse and conflict and offers no protections or security to workers. The Pension Fairness Act, the Democratic substitute, is fair, just, and destined for real reform and protection and security for the workers. I urge a ''yes'' vote on the Democratic substitute and a ''no'' vote on H.R. 1000.

Mr. BOEHNER. Mr. Speaker, I reserve the balance of my time.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 2 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I rise to support the substitute that has been offered by the gentleman from California (Mr. MILLER) and the gentleman from New York (Mr. RANGEL), because I speak both in metaphor, but as well in reality. I rise in tribute to the 53 Democrats in Texas that have had to leave because of processes like this where we have a bill on the floor of the House that does not, in fact, represent the solution to the problem. Why do I know the problem? Because I come from a community where thousands of employees were laid off within 48 hours to 24 hours, laid off, because Enron went bankrupt, and they lost everything. Why did they lose everything? Because they had pension programs that would not be supportive of the freedom to engage in choice.

The Republican bill on the floor of the House does nothing. This bill opens a dangerous loophole that jeopardizes employee retirement savings. It fails to protect the sailor, even when the captain is protected. The bill fails to protect long service workers' pension and cash balance pension convergence. It fails to address the need for an employee to have a voice on a pension board. It leaves employees locked into company stock for long periods of time. That was, if you will, the undermining of Enron employees and other employees. They could not get out. We had retirees that lost $1 million, $1 million because they could not get out of their pension plan. They simply could only stand by and cry as their savings crumbled.

Mr. Speaker, if we are going to be serious about the corporate systems who have failed us, if we are going to pay tribute to those employees and retirees who have catastrophic illnesses and lost loved ones because of what happened in our community and in Houston, if we are going to be supportive of a Democratic process, then I believe it is important to support the Miller-Rangel bill and vote ''no'' on H.R. 1000.

Mr. Speaker, I rise in opposition to H.R. 1000, the ''Pension Security Act of 2003,'' because this bill fails to sufficiently address the devastating impact of corporate misconduct on employee retirement plans.

Congress has the responsibility to provide American citizens with legislation that protects them and their families. This legislature should support legislation that ensures the pension plan protects employees' retirement accounts, by requiring the pension plan be diversified. We should also draft legislation that compels companies to provide employees with investment advice about pension plans and the assets included in the pension plan. Finally, Congress should draft legislation that both imposes and expands both civil and criminal liability malfeasance of pension plan fiduciaries and administrators.

H.R. 1000 does not adequately address the many issues facing employees pertaining to

their pension plans. H.R. 1000 allows employees to sell company stock after 3 years, and requires pension plan administrators to give employees 30 days written notice prior to any lockdown. On the surface these provisions seem like improvements to existing law and relief for America's employees. However, H.R. 1000 simply fails to sufficiently amend current pension plan law to account for and remedy disasters like the collapse of Enron.

Under H.R. 1000, companies would be free to provide investment advice that is not necessarily in the best interest of the workers. After companies provide this poor advice, they would be free from legal liability as long as the investment advisors disclose any conflict of interests.

Under H.R. 1000, pension plan participants would continue to be denied representation on pension boards resulting in employees having no voice in important pension plan decisions. In addition H.R. 1000 omits any provisions that would provide employees with notice when top management is contemplating dumping their stock. H.R. 1000 also fails to hold such administrators liable for knowingly making material misrepresentations or concealing such information from plan participants.

The Enron collapse is a paradigm example of what can happen when there is not full disclosure of corporate decision making in pension plans. In the Enron case, executives and senior management staff were encouraging employees to by company stock. At the same time, those same executives and senior managers were cashing out millions of dollars shortly before the company declared bankruptcy in December of 2001. Full disclosure and liability would have protected the 4,500 Enron employees who lost their jobs in my home district alone.

H.R. 1000 is also potentially dangerous to employees because it fails to impose limitations on assets that the corporation can hold its stock reserves. Limiting the amount of stock the corporation holds would result in diversification of the plan and guarantee there was adequate revenue and protection in the employees' retirement accounts. Once again, the Enron case illustrates the importance of limiting corporate stock ownership. In December of 2000, 62 percent of the assets in Enron Corporation's 401(k) plan consisted of shares of Enron stock. This lack of diversification meant financial ruin for thousands of Enron employees. Exxon Mobil is another example. That corporation, the 2nd Largest Fortune 500 Company in America, holds an estimated 77 percent of plan assets in company stock.

Diversification reduces the risk that a pension fund would become insolvent as a result of the company that sponsors the plan going bankrupt. Congress has required Defined Benefit Plans to diversify assets beyond 10 percent and also has generally exempted defined contribution plans from any type of risk reduction requirements that would provide plan protection through diversification.

The Democratic substitute to H.R. 1000 addresses the many flaws in the original bill. The democratic substitute would give employees the power to protect their retirement investments and provide for a more comprehensive bill that addresses the many problems raised by the Enron tragedy. The Democratic substitute will effectively prevent plan administrators from engaging in unlawful and unethical practices, and will ensure that plan participants are allowed to diversify their interests. The Democratic substitute also guarantees that employees are adequately represented on pension boards and that they receive adequate independent investment advice.

Mr. Speaker, I oppose H.R. 1000. This legislation does not provide adequate protection to employees. I support the Democratic substitute to H.R. 1000 because it protects employees from corporate malfeasance in the management of their pension plans.

The SPEAKER pro tempore (Mr. LINDER). The time of the gentleman from California (Mr. GEORGE MILLER) has expired.

Mr. BOEHNER. Mr. Speaker, I yield myself the balance of the time.

There has been a lot said today about the fact that this bill may not go far enough, and the substitute that we are about to debate in the coming hours goes much, much further.

The issue here that Members need to understand is that our pension system is a voluntary system on behalf of employers for their employees. And while we will have much more debate on this when we get into the substitute, we walk a very fine line when we bring pension issues to this floor.

The retirement security for American workers in most cases is one of their largest assets. It has to be treated with great respect. And all of us who have served in a legislative body, and especially here in Congress, know that we always have to deal with the law of unintended consequences. If we make one mistake, we could cost millions of Americans the right to their own retirement. So we have to be very careful.

That is why, if we look at the bill that we have before us, we make modest reforms to correct problems that we found in the wake of Enron and WorldCom, and others. We do not do a wholesale overhaul of our pension security laws, because, in honesty, it is not needed.

Now, the most substantive part of this bill would allow employers to offer to their employees real investment advice. We have over 60 million Americans who have self-directed accounts today, and most of whom have no access to real investment advice. The substitute that we are about to consider, given all of the rules they have around advice, will mean exactly what we see in the marketplace today: no advice.

Yes, we do allow those who sell products to offer advice. We do require them to provide notice to the employees of potential conflicts. We hold them to the highest fiduciary duty. If there is any difference in fees, they have to let the employee know. But our goal here is to get real investment advice into the hands of everyday, working people who want and need this advice, and they need it now. With these new self-directed accounts, if they are going to really have the kind of retirement security that they expect and that we want, they need real investment advice.

Current law, written in 1974, before the birth of the current financial services firms, barred those who sell product from giving advice. Now, if you are not in a retirement plan, and you are going to spend your money, you can get all the advice you want from all of the people in the world who sell products. But, oh, no, we cannot do that if you are in a qualified retirement plan. That is wrong. We should not lock out those firms that are the most successful firms in the country from offering their advice and their expertise to American workers. Workers do not have to take it.

Secondly, in the bill we have an above-the-line tax deduction for employees in order to go out and seek their own investment advice if they do not want what the employer offers.

□ 1345

Now, I think between both of these issues employees need to have options to go get the kind of advice that will benefit their own retirement security. The underlying bill is a very good bill. It had passed this House with broad bipartisan support about a year ago, and I expect that it will have broad bipartisan support today.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. LINDER). For the remainder of the debate, the gentleman from Texas (Mr. SAM JOHNSON) and the gentleman from California (Mr. MATSUI) each will control 20 minutes of debate on the bill.

The Chair recognizes the gentleman from Texas (Mr. SAM JOHNSON).

Mr. SAM JOHNSON of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, PBGC, substantial owner. This important provision was approved by the Committee on Ways and Means last week, and I am glad that we are also including it in this bill today.

This provision could help breathe life into defined benefit plans in small businesses. Right now the owners of small businesses have several disincentives to offering traditional pension plans. Aside from the fact that these plans are too expensive to maintain because of too much red tape, owners of small businesses are prohibited from receiving guaranteed benefits from PBGC should their businesses fail. It is crazy to think that small businessmen would offer traditional defined benefit plans, pay the expensive insurance premiums to the PBGC, and then be prohibited from receiving the same insurance benefit that all their employees receive if the company fails. This provision fixes that and allows owners to get some benefits from PBGC.

This bill also reduces PBGC premiums for new pension plans and for small pension plans. Those premiums are an expensive barrier to those few employers who are willing to set up traditional defined benefit pension plans. Reducing premiums could help

bring back this type of pension plan. This bill is long overdue. It should have been approved in our other body during the last session, but this time it looks like it can be and should be, for the benefit of all Americans.

Mr. Speaker, I reserve the balance of my time.

Mr. MATSUI. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, it is kind of astonishing 2 years after Enron and WorldCom we are finally, again, taking up a bill that presumably is supposed to deal with the particular issues that Enron and WorldCom raise. Unfortunately, I do not think the bill does, which is really tragic in America today.

Almost every study I have seen and many people have seen over the last 5 years has indicated that the baby boom population, which is now retiring, does not have adequate retirement benefits for their future. And as a result of that, many Americans are going to be working longer, even though the unemployment rate is going up.

This legislation on the floor presented by my Republican colleagues unfortunately does not address the issue of pension benefits and retirement security for Americans that are about to retire. Let me just give you some examples of that.

The gentleman from Ohio (Mr. BOEHNER) talked about, well, we are going to allow independent investment advice for some of these companies for their employees. The only problem is it is kind of a ruse, because, in fact, this legislation will allow a conflict of interest for those investment advisers that they will then be able to make misleading information and statements to their employees.

Secondly, which is probably even more difficult to understand, is that this legislation, believe it or not, holds harmless from liability the employer when these advisers give misleading advice or fraudulent advice. So the worker is basically left without any remedy or resources and at the same time probably will be able to get advice that is misleading and full of conflicts of interest.

It allows cash balance plans. The only problem is if you are 50 or older, you can end up losing your retirement benefits because, as all of us know when you are in the workforce, the closer you get to retirement the greater benefit you get; but if you move to a cash balance, that is eliminated. And it does not give the employee the option to say, I want to go into a new plan or stay in my old plan. So automatically the employee is going to be damaged.

Our substitute, which will come up later, will address that issue, just like it will address the issue of independent advice.

In addition to that, which is somewhat surprising, is the whole issue of executive compensation, the whole issue of executive compensation which was the issue of Enron and WorldCom. It states that in terms of the 401(k) plan that the Enron employees had, they had to hold that Enron stock in there for an indefinite period of time.

The gentleman from Ohio's (Mr. BOEHNER) bill says you can take it out after 3 years. The problem is it is discretionary with the employer. So Enron could have made them keep the money in beyond 3 years, and that would have resulted in the same problem. So this bill does not do anything to overcome the Enron problem. In fact, the Attorney General of the State of New York, Eliot Spitzer, said, ''This legislation opens a loophole that will sharply erode, rather than enhance, safeguard for employees seeking independent and untainted advice how to invest in their retirement savings.''

The Attorney General of New York has said this; this legislation will actually do more harm than good.

Let me just conclude by making a couple other observations in my time, Mr. Speaker. This bill also would currently allow Ken Lay, the CEO of Enron Corporation, to keep his retirement benefits even though the company had filed bankruptcy and even though almost every Enron employee ended up losing their entire retirement benefits because most of their stock was held in Enron company stock in their 401(k) plans. This bill would have allowed that to continue on.

In addition, this bill would do nothing to help the American Airline employees, and all of us know the American Airline executives attempted to preserve a golden parachute for themselves and at the same time ask their employees, which is somewhat ironic, to cut their benefits.

So this bill does not address some of the major issues that I think the American public are concerned about in terms of its own income security.

Let me just say this, in terms of coming up with legislation to protect income security and fraud, we need to reexamine this legislation. Our Democratic substitute to be offered by the gentleman from California (Mr. GEORGE MILLER) will address these issues, but this bill does not.

Mr. Speaker, I reserve the balance of my time.

Mr. SAM JOHNSON of Texas. Mr. Speaker, I yield 3 minutes to the gentleman from Pennsylvania (Mr. ENGLISH).

Mr. ENGLISH. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, I rise today in strong support of the Pension Security Act, which is very similar to legislation that was passed last year by the House of Representatives in response to the Enron crisis.

This is mainstream legislation that provides fundamental protections to American workers and American pension systems.

Now, as I listen to the debate here, I am struck by a certain Alice in Wonderland quality to the entire proposal because we have heard on the other side an enumeration of some of the things that they think this bill does not do. They do not focus on the fact that this does include fundamental protections.

They complain that this has taken a long time to do, and yet it was their party in the U.S. Senate that held up the proceedings on this bill after we passed it in the last Congress.

This is clearly legislation whose time has come, and I am very proud of the work that two of our committees have done, in the Committee on Education and the Workforce and in the Committee on Ways and Means, on which I serve, to make this legislation possible. Ultimately, the bill before us is one of the most important measures to secure Americans' retirement futures that we will work on this year.

Our working families clearly deserve to know that their hard-earned dollars invested in pension and retirement savings are secure. We have seen the devastating effect of corporate scandal on employees' pensions. The House again is responding to the challenge to make sure that the Enrons and WorldComs of the corporate world do not destroy the savings of their employees. This bill clearly provides rights to workers to diversify pension plan assets and protections against corporate abuses and pension mismanagement; and it also helps small businesses provide retirement security for their workers, which is one of the most fundamental reforms given, that so many small businesses currently do not extend to their workers those options.

By giving small businesses just a little relief from burdensome and costly regulations, millions of small business employees will now have retirement security. This is a worthy goal. This is worthy legislation. And I hope in the end when the smoke clears that this body will support it on a bipartisan basis.

Mr. MATSUI. Mr. Speaker, I yield 2 minutes to the distinguished gentlewoman from the State of Connecticut (Ms. DELAURO).

Ms. DELAURO. Mr. Speaker, I rise in strong opposition to this bill.

It has been a year and a half since the collapse of Enron, a year since the collapse of WorldCom. What has this body done to protect the pensions of American workers? Nothing.

We have indeed passed legislation, but legislation that fails to allow employees the right to fully diversify their stock, legislation that fails to hold executives who are fiduciaries in the pension plan accountable if they violate the law. Executives like Ken Lay. Legislation that allows employers to give the same conflicted financial advice the Republicans tried to push on the American workers before the Enron scandal broke.

With this bill we head down the same road. Xerox, Georgia Pacific, Bank of Boston already have switched from traditional defined benefit plans to cash balance pension plans that leave older

employees with their pensions slashed up to 50 percent. This bill would actually make it easier for more companies to adopt such practices. It would make it easier for companies like Motorola to put another $38 million into the retirement funds of their executives while they contribute not one cent to their workers' already underfunded pension funds.

Quite frankly, this bill does absolutely nothing to limit runaway executive compensation or protect employees from these unfair benefit cuts. It is obvious to everyone but this Republican majority that our pension rules do not do enough to protect helpless employees. It does not protect them from being locked out of their pension plans while their life savings go down the drain or protect them from venal executives who would take their money and run.

The majority seems to think that this is somehow acceptable behavior. You tell the folks in Westbrook, Connecticut, people who lost $2 million from their pension plan. I met with these men and women. We worked to win back their hard-earned retirement savings. This is about what this kind of reckless behavior does to a family that is struggling to pay a mortgage, to pay for their children's college education fund. No one should have to go through what families have been put through.

There is a Democratic substitute today. We have an opportunity to protect the working men and women in this country. Vote against this flawed Republican bill, and vote for the Democratic substitute.

Mr. SAM JOHNSON of Texas. Mr. Speaker, I yield 2 minutes to the gentleman from Delaware (Mr. CASTLE).

(Mr. CASTLE asked and was given permission to revise and extend his remarks.)

Mr. CASTLE. Mr. Speaker, I thank the gentleman for yielding me time.

I congratulate him and others who worked on this, the gentleman from Ohio (Mr. BOEHNER) and others who worked on the legislation before us.

Mr. Speaker, I would like to get out of that a little bit and talk about where we are going. I do not disagree with the gentlewoman from Connecticut (Ms. DELAURO). There are a lot of problems out there that need to be fixed.

□ 1400

It seems to me, Mr. Speaker, we started with Sarbanes-Oxley, and we started to address a lot of those problems in terms of employees, corporate management, those questions.

We then went on to dealing with the issue of management on retirement funds. That is what we are doing for the most part out there in this country today. Whether we like it or not, that is happening, and basically this bill, if we take the time to really read it and be thoughtful about it, really provides more flexibility and diversification for the employees so they can make decisions and are not going to be bound in to something like their own company's stock and locked in such a way they cannot make the right decision, and it provides for more investment advice for that.

Some argue it is not independent. In my view of reading it, it is. Those are the kinds of thing we need to do. I believe if we had taken those steps, we would have avoided a lot of the problems that we had in places like Enron and WorldCom.

This measure requires companies to give workers, for example, quarterly benefits statements that include information about accounts, including the value of their assets, the right to diversify and the importance of maintaining a diversified portfolio.

We need to educate people in America about retirement needs, about what investments are. We need to work very hard on this because that is what they have to do anyhow, so we ought to have legislation which enables them to know more about it so they can make sound investments in light of whatever they want to do in the future.

I believe that this brings unprecedented new retirement security protections and literally would protect thousands of workers who got burned very badly in the last 3 years and hopefully are in some sort of recovery now. I would encourage everyone to support it.

I do not know much about the substitute. We will hear more about that here in a few minutes, but I will tell my colleagues, the underlying bill is something that is helpful.

Mr. Speaker, I rise today in strong support of H.R. 1000, the "Pension Security Act." I am proud to be a cosponsor of this measure that passed the House with bipartisan support in the 107th Congress and I thank Chairman BOEHNER and Subcommittee Chairman SAM JOHNSON for bringing this matter to the floor again. I am hopeful the measure will again pass as it provides important protections to working Americans with employer-based retirement plans.

Sadly, we have watched many Americans see their retirement savings plummet. Congress took a much needed step in enacting the Sarbanes-Oxley Act and this legislation further strengthens those reforms. This legislation gives workers greater ability to manage and expand their retirement savings.

Congressional hearings in 2002 established that inadequate worker access to investment advice contributed significantly to retirement security losses by employees at Enron. This bill provides greater resources to American workers by allowing employers to provide their workers with high-quality, professional investment advice as an employee benefit, while maintaining safeguards to protect the interests of workers and investors. This measure requires companies to give workers quarterly benefit statements that include information about accounts, including the value of their assets, their rights to diversify, and the importance of maintaining a diversified portfolio.

The "Pension Security Act" would give workers unprecedented new retirement security protections and would have helped to protect thousands of Enron and WorldCom employees who lost their savings during the company's collapse. Workers must be fully protected and fully prepared with the tools they need to protect and enhance their retirement savings. The "Pension Security Act" accomplishes these goals and I urge my colleagues to join me in supporting this important legislation.

Mr. MATSUI. Mr. Speaker, I yield myself 30 seconds.

I would just like to say to the gentleman from Delaware, I know he read the bill, but the problem with the bill that the Republicans have offered us is it actually makes the situation worse. Instead of giving independent advice, as the gentleman stated, it actually cloaks it in independent advice, it really does not.

What it basically does is allow conflicts of interest and hold harmless to the employer, and at the same time I think the whole issue of diversification, no, only subject to the whims of the employer will that be allowed. Enron would have not allowed it. So nothing would change. That is the problem.

The Democratic substitute, I am sure the gentleman has read that, will take care of these problems that the gentleman has raised and talked about, but not the Republican bill.

Mr. Speaker, I yield 2½ minutes to the distinguished gentleman from Massachusetts (Mr. DELAHUNT).

Mr. DELAHUNT. Mr. Speaker, I thank the gentleman for yielding me the time, and he is absolutely correct. What this bill does is bad enough, but what it fails to do is even worse.

The sponsors have named it the Pension Security Act, but it does nothing to protect workers and retirees from the corporate abuses that have put their hard-earned savings at risk. If this is the Republican's pension security plan, one shudders to think what they would do with Social Security.

At company after company, top executives have awarded themselves millions in bonuses, stock options, severance packages, driving their companies into bankruptcy and leaving their workers holding the bag. What does the Pension Security Act do for them? Not a thing.

Airline executives lose billions, lay off thousands of workers, but then go and set up secret trusts to protect their own retirement assets and put it out of the reach of creditors. What does this bill do for them? Not a thing.

Polaroid executives in my home State of Massachusetts cancelled retirees' health insurance and terminated workers on long-term disability, all the while awarding themselves millions in bonuses and severance packages. Once the company was sold, the new CEO terminated the pension plan as well. What does the Pension Security Act do for them? Not a thing.

We are in the midst of an unprecedented wave of business failures, rising unemployment and growing numbers of Americans who cannot afford health

insurance premiums, let alone a 401(k) plan. What will the Pension Security Act do for them? Not a thing, nothing at all.

This bill is a fraud, and it deserves to be defeated.

Mr. SAM JOHNSON of Texas. Mr. Speaker, I yield 2 minutes to the gentleman from Georgia (Mr. ISAKSON).

Mr. ISAKSON. Mr. Speaker, I thank the distinguished gentleman from Texas for yielding me the time.

I want to clear something up, and I would appreciate if the ranking member, the distinguished gentleman from California, would look this way.

In rising to take my 2 minutes, I want to clear something up. I am on the Committee on Education and the Workforce, and I have great regard for the gentleman's work in the Committee on Ways and Means, but is it not true that the legislation includes both the Boehner and the Portman provision that allows an individual employee to choose their professional adviser and to deduct as a deduction the cost of that advice on their tax forms? Is that not true?

Mr. MATSUI. Mr. Speaker, will the gentleman yield?

Mr. ISAKSON. I yield to the gentleman from California.

Mr. MATSUI. Mr. Speaker, it allows them to do this, but with a potential conflict of interest, obviously the disclosure conflict of interest, but the problem is that the employer is held harmless from liability. That is what the problem with the bill is.

Mr. ISAKSON. Let me answer that part, too. If the employer provides the advice, the adviser is liable. They are liable under the Boehner bill and the one that came out of the Committee on Education and the Workforce. If the employer provides it, they are liable.

If that had been true under Enron's case, if it had been true under WorldCom's case, I doubt we would be sitting here today. We would be reading stories about those advisers who were in jail.

Secondly, if the employee chooses not to want the advice of the adviser that is liable from the company, then they are free to choose their professional adviser and use the cost as a legitimate deduction on their taxes.

The point I want to make is we can argue about executive compensation. We can argue about health plans, which are not even in this legislation. We can argue about anything, but the fact of the matter is with the passage of this bill, an individual is encouraged to seek independent advice. If it is not independent advice, the dependent adviser is liable to them if they do anything not in the interest of the employee, and if they seek advice independent, they are allowed to use as a legitimate deduction the cost of that individual they choose for the advice they got.

I would submit to my colleague it would not have taken a whistle-blower at Enron to blow it sky high. Under this bill we would have had an employee getting legitimate advice who would have understood long before that there was a problem, and millions of dollars would have been saved in the pensions of employees.

Mr. MATSUI. Mr. Speaker, I yield 3 minutes to the gentleman from Maryland (Mr. CARDIN), a distinguished member of the House Committee on Ways and Means, ranking member of the committee, who will actually address this issue.

Mr. CARDIN. Mr. Speaker, let me try to explain the problem with the advice sections of the bill that is on the floor.

What my colleagues have done in this legislation is remove the prohibited transaction on giving advice by the agent that is selling the product to the employee. What does that mean? That means an employer can hire an investment company that will be responsible for the investment options that the participant must participate in, and the actual person giving the advice to the participant makes a commission based upon what product that individual sells.

Under current law, that is a prohibited transaction and is not allowed. Under the legislation that has been reported to the floor, that is now permitted without any protection basically in the bill at all.

I regret that I cannot support this legislation. Let me just take my colleagues back to the last Congress where I thought we tried to work in a bipartisan way to deal with the problems of Enron and WorldCom, and we made some progress, but then somehow when the legislation got reported to the floor, all that cooperation, all that bipartisan working together was lost when the Committee on Rules reported out a bill that contained many provisions that were never agreed upon in trying to resolve the issues before us.

We are now faced with legislation that opens up a huge loophole that could magnify the problems we had in Enron and WorldCom by giving congressional sanction to individuals who are more interested in getting a commission from the participant in the plan than giving sound advice as to what will work with that individual's need. Do we need to pass legislation? Absolutely. But this is not the right bill.

Fortunately, there will be a Democratic substitute, Mr. Speaker, that will address the legitimate concerns that are out there, and I regret that we have not been able to work together to develop the type of legislation that is needed to deal with the Enron-type scandals. We should have done that. We should have worked together, but for reasons unknown to me, the majority has decided to go this route, which I think could very well cause more harm than benefit to the beneficiaries.

I urge my colleagues to support the Democratic substitute and, if that is not accepted, to reject the underlying bill.

Mr. MATSUI. Mr. Speaker, I yield 2½ minutes to the distinguished gentleman from California (Mr. BECERRA), a member of the House Committee on Ways and Means.

Mr. BECERRA. Mr. Speaker, I thank the gentleman for yielding the time.

Mr. Speaker, Enron, Global Crossing, WorldCom, the recent record of investment advisers serving their own interests above those of employees or investors is an unambiguous one and is not a pretty one. The time is not right for this particular idea because opening up a loophole to allow an employer to offer conflicted investment advice to its employee shareholders is something that, with previous history right before us, makes it very clear that we open up a Pandora's box.

Maybe sometime in the future we can figure out how to do this the right way, and I believe the Democratic alternative does exactly that. It finds ways to make sure that our investment by employees who work very hard not only are protected, not only is there flexibility, but that it can be done in a way that gives the employer the best opportunity to make sure employees are making the most of their investments, but to today believe that we can open the door to permitting conflicted investment advice is to not look at history and to not look at history of just the recent past.

Has the scandal of Enron left our mind so quickly that we believe we could do this? Are we still not aware that Global Crossing is still in the bankruptcy court? Did we forget that WorldCom could not provide to its employees its 401(k)s? It does not make any sense, and when we take a closer look at this legislation and see that for older workers we are not only harming them and encouraging more risk, but we are actually making it more difficult to protect older workers' investments, that does not seem like a very smart thing to do.

Then finally when we add to that that we do not provide to rank-and-file employees the type of flexibility they would need so we could have avoided the Enron scandal, because remember, in the Enron scandal, a lot of employees saw their stock, the value of their 401(k), tanking, just going down to nothing, and a lot of them, before it turned out to be valued at zero, said, let me pull it out, but they could not. They were stuck. The way the law was written, they could not pull it out. Executives could, but the rank-and-file employees could not.

If we are going to reform pension opportunities, why do we not reform that to provide employees more flexibility? Democrats tried to do that. This bill does not. This is not the right bill at the right time. Let us vote this down and vote for the Democratic substitute.

Mr. SAM JOHNSON of Texas. Mr. Speaker, could I inquire as to how many more speakers the gentleman has?

Mr. MATSUI. I have an additional speaker here.

Mr. SAM JOHNSON of Texas. Mr. Speaker, I reserve the balance of my time.

Mr. MATSUI. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Massachusetts (Mr. FRANK), the ranking member of the Committee on Financial Services.

Mr. FRANK of Massachusetts. Mr. Speaker, sadly this bill reminds me of some comments we heard just a week or so ago from leading corporate executives who, having signed an agreement in which it was clear that their companies had abused the trust of investors, tried by public statements to water that down, and I admire the vigor with which the new head of the Securities and Exchange Commission Mr. Donaldson, who appears to be doing a good job, spoke out harshly against them.

What he said was, look, we have got to acknowledge that we made, as a society, serious errors, and we have to be willing to make a whole-hearted effort to correct them, and essentially what we saw were chief executives of culpable corporations who were making it clear that whatever reforms they had agreed to came grudgingly and reluctantly.

That is what this bill is. It is a grudging, reluctant acknowledgment that something had to be done, and it is an effort in the face of serious wrongdoing that took hard-earned money away from large numbers of people to do as little as people think they can get by with.

□ 1415

This is a time for us to be forthcoming. This is a time for us to do an expansive piece of legislation protecting people. We are not dealing with speculative ills here. We are dealing with real harm that was done to real people. And a bill such as this, a grudging and partial acknowledgment that there were some mistakes but a refusal to deal with them in their entirety, is the same spirit that we saw from these corporate executives: you caught us, and you are going to make us do something; but we are going to fight you every step of the way, and we are not going to give any wholehearted endorsement to measures that will change things.

The measures that are in the Democratic substitute that will be coming forward represent, frankly, the spirit in which the head of the SEC spoke, and I hope we adopt it.

Mr. SAM JOHNSON of Texas. Mr. Speaker, I yield 4½ minutes to the gentleman from Ohio (Mr. PORTMAN).

Mr. PORTMAN. Mr. Speaker, I thank Chairman JOHNSON for yielding me this time, and I thank him for his work both on the Committee on Ways and Means and on the Committee on Education and the Workforce on this very important issue of helping people save more for their retirement.

I have not been here to hear all the debate today, but I understand there has been a lot of discussion of investment advice; and I did hear someone say, gee, did we forget about WorldCom and Enron. No, we did not. The lesson of so much of what has happened in the last couple of years is the need for more investment advice and, in particular, more diversification. And I know on the other side of the aisle there are those who share that view strongly. We may disagree on how to do it, but to say this legislation is somehow to encourage people to get stuck in pension plans they do not want to be in with corporate stock they do not want is exactly the opposite.

In fact, what this legislation says is that we are going to change the rules so that, number one, for people who end up with matching stock from a company because they are in a 401(k) plan or some other kind of defined contribution plan, those people can get out of that stock. They are not told they have to stay in it.

In Enron, matching stock could not be sold until an employee was 50 years old and had 10 years of service. In other words, people got stuck with the stock. So when Enron's stock went down, that is all they had in their retirement plan. And it is horrible because they are left with nothing. We are saying, instead, after the vesting period, which is only 3 years, those people should be able to diversify out of that stock. That is a good idea, and it is a new idea this Congress has voted on last year; but it is a change in current law and a very important one.

Secondly, we say people should have more information, so when you get into a plan, you have to have notice from the employer saying diversification is a good thing. You ought to diversify. And on a quarterly basis you are now going to be able to get information you cannot get now as a participant in the plan, as an employee.

So these are all good things that are in this legislation. Again, it has passed the Congress before with very strong bipartisan support. This is something we should have done last year but could not get that part through the other body. Hopefully we will be able to do that this year because it all makes sense. And it does relate directly to the scandals of the last couple of years.

The final piece of this is investment advice. This legislation picks up something that was in the Portman-Cardin legislation, which allows people to take pretax money and apply it toward retirement planning. What does that mean? Well, I think the next frontier in terms of helping people save more for retirement is in part better educating the consumer, educating people who are in these plans as to the need to diversify and to diversify wisely depending on their situation in life.

Some people want to be in riskier investments because they are younger and want to build up that nest egg; others, closer to retirement, will want to be in something less risky. Folks need to be able to adjust. They need the information, the advice, the help. So this lets people take, on a pretax basis, purchase investment advice. It is like a cafeteria plan, or some other plan that people might want to take at their place of business.

This is a good idea. Not everybody will take advantage of it. But investment advice is expensive. This lets people take that pretax dollar and apply it towards investment advice. I hope there is not disagreement on that on a bipartisan basis. I think it is a good use of our Tax Code. I think it is a good way to get over that hump and to get people better educated.

The second piece in this advice legislation, which I think has had more discussion today, is the question of should companies be able to bring in advisers to advise their employees. Again, the situation is people are not getting the education information they need. How can they get that good advice? This says let us give those companies the ability to do that, but let us establish some rules.

Number one, people have to be certified; they have to be qualified to do it. That is in the legislation. It is good that that is in the statute. Second, let us establish a fiduciary relationship that this adviser would have to the individual employees who would be advised and consulted with. That means the person giving advice would be personally liable if that person were to do something that would create a problem for that participant.

Finally, it says that you have to disclose any potential conflict of interest. So if there is any potential conflict, in other words if you are giving advice, such as you should buy this particular kind of mutual fund or this one, and that person sells that mutual fund, you have to advise the person of any potential conflict of interest.

Now, we may be able to work over time to make this a better approach in terms of that specific issue of bringing investment advisers in. We would love to work with the other body on this. We have not been able to do so successfully. But we should stop this notion of partisan rhetoric against the idea, because the education advice is absolutely needed. We should be able to do it and get it done for the participants in the plan.

Mr. MATSUI. Mr. Speaker, I yield 2½ minutes to the distinguished gentleman from Washington (Mr. MCDERMOTT), a member of the House Committee on Ways and Means.

(Mr. MCDERMOTT asked and was given permission to revise and extend his remarks.)

Mr. MCDERMOTT. Mr. Speaker, sometimes when I come to the floor, I think I have come back into the French Theater of the Absurd.

Here we have a bill that we are going to allow employers to provide financial advice to their employees but does not require sufficient safeguards to ensure that the advisers do not have a conflict of interest.

The country has gotten a better idea about the Republican idea of fiscal management recently, and I am sure that that would be the kind of people they would want their employees to get their information from. Despite running a budget of $400 billion in debt this year, they continue to spend money for their affluent supporters in trying to keep them from cutting taxes. They have really turned a modest government surplus into a prescription drug problem for the next 25 years. We are drunk on giving tax relief.

If we look at Mr. Bush's economic report on page 58, he says: ''A conservative rule of thumb is that interest rates rise about three basis points for every additional $200 billion in government debt.'' Now he tells us that things are going to go up. He tells us, and yet he continues to drive us into the hole.

Now, I was thinking about the kind of advisers that the company might recommend. They might recommend Bear Stearns or Credit Suisse or Deutsch Bank or Goldman Sachs, or any one of a dozen companies here that the Attorney General of New York has just fined $1.4 billion for misleading their investors. If you are an employer, and you want them to buy the stock in your company so you have some dough, and you send them to your credit bank that floats your bonds, it would not be very surprising if they recommend that people buy your company, even if it was like Ken Lay and Enron and it was going in the tank within a week. But there is nothing in this bill that says you cannot do that. Any way you can manipulate your workers is fair game.

Now, there is a legitimate role for government, and that is to protect the American people. And not only to protect them from terrorists and al Qaeda or whatever is going on in the rest of the world, but from the financial rapacious people in New York City.

The SPEAKER pro tempore (Mr. LINDER). The gentleman from California (Mr. MATSUI) has 1 minute remaining, and the gentleman from Texas (Mr. SAM JOHNSON) has 6½ minutes remaining, and the gentleman from Texas has the right to close.

Mr. MATSUI. Mr. Speaker, I yield myself the balance of my time, 1 minute, to close.

If I may, Mr. Speaker, because a lot has been said to address the issue of the independent advice that my colleagues seem to be really hung up on, it is a question of definition. The way they say independent advice is that if the independent adviser says I may have a conflict of interest, one time, then after that it is Katy, bar the door. They can say whatever they want.

Most employees do not just work 3 days a week, on Tuesday, Wednesday, and Thursday, like we in the House of Representatives do. They have kids to take to school. They have a lot of obligations. They do not remember when people say I may have a conflict of interest. And as a result of that, it is meaningless what my colleagues on the other side of the aisle are doing. There will be conflicts of interest; but the real problem is, obviously, that the employer will be held harmless from liability when the conflict of interest actually does damage to the employee.

I am just going to conclude by saying this. This bill will not help the average American, this will not help individuals who have 401(k) plans, and it definitely will not help the baby boom population that is about to retire now and who has inadequate funds for their income security. We need to address this in a much larger context and actually not do the kinds of damage that this bill will do under the so-called ruse of being good government.

This is not a good government bill. It will do more damage than the status quo.

Mr. SAM JOHNSON of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I just would like to make the statement that my friend on the other side voted for H.R. 2269, which was the original Investment Advice Act, in November of 2001.

The minority is comparing the investment advice that this bill would allow with the recently concluded Global settlement involving several Wall Street firms, the SEC, and the New York Attorney General. It is a bad comparison. It suggests they do not understand the bill or the Global settlement.

The so-called Global settlement involved claims about individual company stocks which analysts were allegedly recommending while their firms were seeking investment banking business from the same companies without telling them, individual investors, about the relationship.

H.R. 1000, which we are discussing today, is about 401(k) allocations, which mostly involve mutual funds. Mutual funds and the advisers who provide guidance about mutual funds are in no way implicated in the Global settlement. But because they also provide investment advice, the minority is tarring them with the same brush.

In addition, the Global settlement was about potential conflict of interests which were not disclosed to investors. This bill requires clear disclosure of any such relationship so that investors can make the decision themselves about whether to accept or reject the advice.

Finally, the Global settlement was just a settlement in exchange for a number of reforms aimed at making sure investment analysis is without conflict of interest. The investigators who police Wall Street have dropped their lawsuit and settled their disagreement.

I would like to also include at this time the statement from the administration on their policy: ''The administration strongly supports passage of H.R. 1000, which encompasses important principles outlined in the President's pension retirement security plan. Like the President's plan, this bill strengthens workers' ability to manage their retirement funds by giving them more freedom to diversify their investments and by providing better information to workers through improved 401(k) and pension plan statements. The bill will also permit employers to provide their employees with access to professional investment advice. H.R. 1000 would give American workers access to information through expert advisers.''

The White House strongly supports this bill. I believe it requires a ''yes'' vote.

The statement of administration policy follows:

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,

Washington, DC, May 14, 2003.

STATEMENT OF ADMINISTRATION POLICY

H.R. 1000—PENSION SECURITY ACT OF 2003

(Boehner (R) Ohio and 54 cosponsors)

The Administration strongly supports House passage of H.R. 1000, which encompasses important principles outlined in the President's Pension Retirement Security Plan. These principles were included in last year's pension reform bill that passed the House with significant bipartisan support. The Administration looks forward to working with Congress to ensure the legislation moves quickly through the process and is consistent with the President's budget.

Like the President's plan, this bill would strengthen workers' ability to manage their retirement funds by giving them more freedom to diversify their investments and by providing better information to workers through improved 401k and pension plan statements. This bill will also permit employers to provide their employees with access to professional investment advice. H.R. 1000 would give American workers access to information through expert advisers, who assume full fiduciary responsibility for their counsel and disclose relationships and fees associated with investment alternatives, so that they can make better retirement decisions. The bill also contains other important provisions that will help strengthen America's private retirement system.

The Administration will oppose legislation that discourages employers from sponsoring and making contributions to retirement plans for American workers and their families.

Pay-As-You-Go Scoring

The Budget Enforcement Act's pay-as-you-go requirements and discretionary spending caps expired on September 30, 2002. The Administration supports the extension of these budget enforcement mechanisms in a manner that ensures fiscal discipline and is consistent with the President's budget. OMB's cost estimate of this bill currently is under development.

Mr. CONYERS. Mr. Speaker, with the passage of the Fairness Act of 2003, the Republicans are once again placing corporate special interests ahead of the public interest. This bill is heavily stacked in favor of corporations and corporate executives with few, if any, protections for the average working American. It does little, if anything, to insure that working Americans retain the hard fought pension plans that they have worked so hard to attain. Alternatively, the Democratic pension plan would help level the playing field by subjecting executive pensions to the same pension rules

that apply to rank and file workers. The Democratic plan closes loopholes that allow special executive pension plans, such as deferred compensation plans, trusts and split dollar plans, to escape taxation and to receive special protection against creditors. Further, the Democratic plan would also apply the same uniform and fair vesting and contribution limits to executives that apply to ranks and file employees.

Instead of protecting pensions, the Republican plan increases the vulnerability of the hard earned retirement income of workers by allowing investment advice which is tainted by conflicts of interest.

Under the Republican plan, provisions currently in place under ERISA would be undermined by allowing employers to give biased, self-interested advice to workers concerning the investment of plan assets, as long as the investment advisor discloses a conflict of interest.

The Democratic plan is truly a plan to help average workers, it protects older workers' pensions when a company converts from a traditional pension plan to a cash pension plan. Under the GOP plan, million of workers, especially senior workers, could see their pensions cut by as much as 50 percent. The Democratic plans also ends secret pensions schemes, whereas, the Republican plan locks rank and file workers into company stocks for long periods of time without any legal options. Additionally, the Democratic Plan seeks to limit pension abuses by preventing firms from deducting more than 1 million in executive performance-based compensation if it is obtained through manipulation of the company's pension funds, by imposing an excise tax on executive golden parachutes when they leave behind companies with plummeting shareholder values or which are facing bankruptcy proceedings.

Mr. FRELINGHUYSEN. Mr. Speaker, today I rise in strong support of H.R. 1000, the Pension Security Act of 2003. I believe the time to update Federal pension law is now! I also believe this legislation could have prevented the tragic financial consequences of the Enron collapse, which is why I strongly support H.R. 1000.

This legislation will help ensure the safety of the American workers' pension fund savings through the following ways:

First, this legislation holds businesses to a higher standard of accountability. Specifically, it clarifies that company pension officials who do not act in the best interests of pension beneficiaries, can be held liable for breaching their fiduciary duty. Thus, this legislation ensures that America's CEOs, do not get rich at the expense of the American workers' pension fund savings.

Second, this legislation empowers the American worker by protecting employees against future abuses by giving them more control over their investments. Specifically, the American worker is empowered with the right to diversify employer stock contributions and the option to sell company stock three years after receiving it.

Third, this legislation also empowers the American worker by increasing their access to quality investment advice and by providing them with more information about their pensions. Specifically, it encourages employers to make investment advice available to their employees; it allows workers to use a tax-free payroll deduction to purchase investment advice on their own; and it requires companies to give quarterly reports that include account information, as well as their rights to diversify.

Notably, the Democrat's alternative for pension reform does not address the current shortcomings in the pension system. Instead, the Democratic alternative increases mandates and regulations that will result in increased costs, which will ultimately discourage employers from offering retirement plans altogether.

Finally, this legislation will help restore confidence in America's pension fund system. A generation of American workers have enjoyed a safe and secure retirement. By passing H.R. 1000 today, we will ensure future generations enjoy the same safe and secure retirement.

Mr. ETHERIDGE. Mr. Speaker, I rise in opposition to H.R. 1000, the so-called Pension Security Act, and in support of the Andrews Substitute.

Once again, this body finds itself considering a recycled bill that is harmful to America's working families. More than one year ago, this House passed seriously flawed legislation similar to H.R. 1000. Fortunately, that bill was wisely stopped in the Senate. But instead of taking time to write a bipartisan bill to protect worker pensions, here we are again debating another terrible bill.

As I did during the 107th Congress, I will vote against this misguided bill because it does not protect employee pensions, fails to prevent future corporate scandals, and creates a new loophole in the law jeopardizing employee savings.

Among the most egregious portions of this bill are the provisions relating to retirement investment advice. Under current law, employees are allowed to receive independent, comprehensive investment information as part of their employee benefits package. H.R. 1000 would overturn current law to allow employers to offer conflicted investment advice to their workers. While the sponsors of this legislation argue these provisions would help prevent future corporate scandals like Enron and Global Crossing, nothing could be farther from the truth. Financial institutions should not be able to give out investment advice if they stand to make a profit as a result of that advice.

Instead I am voting for the Andrews Substitute Amendment, otherwise known as the Pension Fairness Act. This important amendment requires executive pensions to be subject to the same pension rules that apply to rank-and-file workers, protects older workers' pensions when their companies convert to cash balance plans, and stops secret pensions schemes that allow corporate fat cats to get rich while workers suffer after their companies goes broke.

In this era, when people are saving less, we must ensure that the pensions of our working families are protected. H.R. 1000 will not achieve that goal, Mr. Speaker. In fact, it will make matters worse.

I urge all my colleagues to oppose H.R. 1000, and to support the Andrews Subsitute.

Mr. BACA. Mr. Speaker, I rise in strong opposition of H.R. 1000, the so-called Pension Fairness Act.

Congress adjourned last year after failing to address the faults in our pension system. A pension system that has been laid bare by catastrophic losses for thousands of workers, the tumbling stock market, and corporate abuse of retirement plans. We are now setting ourselves up to make the system even worse with this bill.

Proponents of this bill claim that the bill will prevent future Enron's and increase retirement security for workers. That is completely false. Despite the recycled and tired rhetoric, the bill would do nothing to prevent the kind of devastating retirement losses suffered by millions of employees and retirees at Enron, WorldCom, and other companies. In fact, it would weaken and even eliminate existing safeguards.

To make matters worse, this bill combined with the Treasury Department's decision to all conversions from traditional pension plans to cash balance plans, is a deadly two-hit combination against our Nation's workers. I thought the purpose of this bill was to benefit workers, not to leave them poor and with a black eye.

Evidence shows that older workers who are employed at companies that have made this switch have seen their retirement nest eggs shrink by 20 percent to 50 percent. In other words, these regulations would undermine a relatively safe retirement benefit and add to households' retirement security woes.

This proposal does not address the three primary problems with today's pension system: lack of coverage for half the workforce, inadequate pension income for low- and middle-income workers, and an unacceptable risk of pension losses for all workers. Clear strategies exist to address each of these issues, but the Pension Security Act of 2003 and the proposed regulatory changes miss the mark entirely.

Only half of America's workers have pension coverage at any given time. Just 50 percent of private sector workers had pension coverage in 2000, a level that has increased only slightly since 1970.

In 2000, 73 percent of our Nation's highest earners had pension coverage, compared with just 18 percent of our Nation's lowest earners. Hispanic workers are covered at a startlingly low rate of 29 percent, compared with 43 percent and 55 percent for their African American and white counterparts, respectively.

Like pension coverage, levels of retirement wealth depend on several factors; however, our retirement income level is still primarily determined by race, income, and gender. Hispanic retirees are far more likely to experience poverty in retirement. As of 1998, a startling 43 percent of Hispanic workers age 47–64 could expect retirement incomes below the poverty line, compared with 13 percent of whites.

The Federal Government spent over $89 billion in 2000 alone, to subsidize employee pensions. Under current law, employers that receive these Federal subsidies must pass a ''non-discrimination test,'' under which firms can exclude some lower-income employees from coverage, but not all.

But H.R. 1000 will effectively destroy this already thin layer of protection for low-income workers.

Under the guise of the now-familiar refrain of ''increased flexibility,'' a goal that has meant more money for employers and less money and fewer rights for workers, the House bill would allow companies to exclude more of their employees from pension coverage and avoid the test for fairness.

This bill is not flawed; it is deliberate. Deliberate in its intention to destroy what few pension protections exist for workers.

H.R. 1000 deliberately intends, like the tax cut, to deceive the working class by claiming to work in their favor, but instead shift those benefits to the wealthy.

I urge my colleagues to defeat this thinly veiled effort to legalize Enron pension scams.

I urge my colleagues to stand up for workers and vote ''no'' on this bill.

Mr. STARK. Mr. Speaker, I rise today to oppose H.R. 1000, the Pension Security Act of 2003. This bill does protect pensions—for CEOs and business owners. This bill doesn't do a thing to secure pensions for the rank and file worker. The bill actually hurts the average worker by weakening the non-discrimination rules that require employers to give the rank and file adequate pensions if they give lucrative pensions to those at the top. H.R. 1000 further hurts the average worker by eroding the conflicted advice rules which currently prohibits consultants from profiting from the investments they recommend to employees. It seems that my Republican colleagues have selective memory when it comes to the scandals of Enron and other corporations who led their employees into retirement pension devastation just last year. The bill before us today does nothing more than promote the behaviors of the greedy corporate executives at the peril of the average workers' retirement savings.

Current rules, enacted in 1986 to protect the average worker from getting left out of the tax-preferred retirement vehicles used by the top brass, require the pension plans to meet very specific tests for the balance between benefits for lower paid and higher paid workers. Today's bill seeks to delegate a significant amount of discretion to the Treasury Department concerning these so-called ''non-discrimination'' rules governing pension plans. Treasury would have the flexibility to permit pension plans to apply a ''facts and circumstances'' test to the benefits provided under the plan. This could result in disproportionately larger benefits going to the highly-paid employees compared to the benefits for the rank and file workers. At a time when 50 percent of the workforce doesn't even have a pension and the other 50 percent are trying to hold on to what they might have after last year's corporate debacles, Congress ought not to put retirement pensions into further jeopardy.

This bill goes a step further to hurt the rank and file workers' pension plans by allowing ''conflicted advice.'' Wall Street recently agreed to pay about $2 billion in penalties for the money it made off of investors by giving conflicted advice—advising investors to invest in the same companies from which they were receiving consulting and initial public offering fees. The SEC is currently trying to devise ways to keep investment advice separate from consulting dealings in order to protect investors. Now, the Republican party wants to take anything we learned from Enron about what not to do with pensions and turn it on its head. This is class warfare because the Republican party has made it class warfare. They aren't interested in helping the average worker who saves a lifetime in order to achieve an adequate secure retirement. The Republicans in Congress and in the White House would rather pass legislation to help their wealthy Wall Street campaign contributors.

The Democratic alternative is a sound bill that would truly protect all workers' pensions, not just those of the CEOs. The Democratic bill would require employers to provide conflict-free investment advice to employees. Our bill would also provide for worker representation on 401(k) boards of trustees. Who better to protect workers' pensions than a worker representative? Finally, the Democratic substitute bill would close the loopholes that permit companies to protect millions of dollars in pension benefits for a few top executives while the retirement savings of rank and file workers are lost.

The Democratic bill brings parity to the pensions of the rank and file worker by requiring executive pensions to be subject to the same pension rules that apply to rank-and-file workers. It would close loopholes that allow special executive pension plans (such as deferred compensation plans, trusts and split dollar plans) to escape taxation, to receive special protection against creditors, and to end-run pension laws that require wide employee participation (of both high and low wage workers) at the company. It would also apply to executives the same uniform and fair vesting and contribution limits that apply to rank and file employees. This bill fulfills President Bush's promise to provide equitable treatment to the captain and the sailor.

I urge my colleagues to put a stop to raids on retirement pensions by voting ''no'' on H.R. 1000 and ''yes'' on the Democratic substitute bill.

Mr. CASTLE. Mr. Speaker, I rise today in strong support of H.R. 1000, the ''Pension Security Act.'' I am proud to be a cosponsor of this measure that passed the House with bipartisan support in the 107th Congress and I thank Chairman BOEHNER and Subcommittee Chairman SAM JOHNSON for bringing this matter to the floor again. I am hopeful the measure will again pass as it provides important protections to working Americans with employer-based retirement plans.

Sadly, we have watched many Americans see their retirement savings plummet. Congress took a much needed step in enacting the Sarbanes-Oxley Act and this legislation further strengthens those reforms. This legislation gives workers greater ability to manage and expand their retirement savings.

Congressional hearings in 2002 established that inadequate worker access to investment advice contributed significantly to retirement security losses by employees at Enron. This bill provides greater resources to American workers by allowing employers to provide their workers with high-quality, professional investment advice as an employee benefit, while maintaining safeguards to protect the interests of workers and investors. This measure requires companies to give workers quarterly benefit statements that include information about accounts, including the value of their assets, their rights to diversify, and the importance of maintaining a diversified portfolio.

The ''Pension Security Act'' would give workers unprecedented new retirement security protections and would have helped to protect thousands of Enron and WorldCom employees who lost their savings during the company's collapse. Workers must be fully protected and fully prepared with the tools they need to protect and enhance their retirement savings. The ''Pension Security Act'' accomplishes these goals and I urge my colleagues to join me in supporting this important legislation.

Ms. WATERS. Mr. Speaker, we find ourselves with yet another Republican bill that does not deliver what its title promises. H.R. 1000 is not a true pension security bill. We can and must do better than this bill.

Since 2001, our country has experienced what has seemed to be almost weekly bankruptcies of some of the Nation's largest companies. Many of these bankruptcies were accompanied by corporate mismanagement and, in some cases, looting of employee pensions.

Enron, Tyco, Global Crossing—and many other companies are household names because of their executives' disgraceful actions. Some of the largest airlines have provided golden parachutes for their senior executives, even as their pilots, stewards and maintenance workers accept pay and benefit cuts to help these companies survive.

The President and his party have been talking tough about the need to protect workers' pensions and to combat corporate misdeeds. The President has been trying to make it sound as if he wanted to pursue tough reforms to strengthen employee protections and protect pensions. Yet, he is supporting this inadequate bill. A bill where, once again, the Republicans have sided with the worst CEOs and the special interests, rather than with our country's workers.

Witness, for example, how this bill locks employees into company stock for excessively long periods of time, putting at risk their retirement savings while company executives are allowed to sell off their stocks at any time. Enron's employees were forced to watch their retirement savings disappear as the company's stock went from a high of $80 to just a few pennies. They were not allowed to sell their stock. Enron executives, on the other hand, sold their holdings as they pleased. Enron's CEO, Kenneth Lay, made almost $50 million; and the Chief Financial Officer made $21 million last year. The company managed to pay out $744 million in salaries, bonuses and stock grants to the company's 140 senior officers just before it collapsed.

The same thing happened with Global Crossing. As the company mislead the public and its employees about its finances, many of the Crossing officials sold their stocks and made millions of dollars. Gary Winnick, the company's Chairman of the Board, sold about 9 percent of his stake in the company for $123.5 million. Each one of his deputies made out just as well. Meanwhile, the company laid off thousands of people. Those Global Crossing employees who managed to survive these job cuts, saw their retirement savings vanish.

Mr. Speaker, with all its many shortcomings, the greatest problem with this bill is that it repeals the law that prohibits employers from offering ''conflicted advice.'' It will now be legal for companies to offer financial advice even though it might be tainted with conflicts of interest. If Congress were to take any steps in this area, we should be strengthening provisions to protect employees and their pensions from such conflicted advice, not eliminating laws that prohibit them.

This legislation is an insult to the millions of people who lost billions in retirement savings while they watched their company leaders continue to enrich themselves. We should not pass this bill.

Ms. MAJETTE. Mr. Speaker, in our rush to pass this legislation, we have failed to consider the needs of the American worker today.

I would like to note my thoughts about this legislation, including what it does and also, importantly, what it does not do. This bill includes a number of provisions that are necessary, including some that are long overdue, but fails to consider some other needs that should be addressed.

For too long, investors have been putting their hard-earned money into investments, including the stock market, without understanding all of the benefits of diversification into different investment options. This bill will allow employers to provide workers with investment advice concerning the divestiture of their plan assets. I am very pleased that this bill also requires investment advisors to disclose any conflicts of interest. I know that plan fiduciaries take their obligations to provide good advice seriously and workers should expect from these advisors no less than the best, most honest financial advice possible. It is my hope that workers, armed with competent, professional investment advice, will translate this knowledge into secure retirement plans that meet their individual needs. I am pleased that workers will no longer be making investment decisions without receiving this financial education.

For too long, workers have been forced by some companies to hold the majority of their assets in their own company's stock. This requirement resulted in many workers holding all of their eggs in one basket and, for many, this requirement resulted in their losing all of their retirement savings (along with their jobs) when companies went bankrupt. This law was outdated and overly-restrictive. I am excited that this bill prohibits employers from forcing workers to keep savings in their own company's stock for more than three years. Employees must be given the opportunity to diversify their investments and, where necessary, rescue their savings when the company's fortunes turn bad.

Unfortunately, these changes to pension law fall short of the broad reform needed to adequately protect workers' retirement savings. Workers specifically need legislation today that will protect their pensions when a company converts to a cash balance plan. Many companies are considering adopting these plans without maintaining the benefits upon which many senior workers have planned their retirements. For a company to strip away promised benefits by changing the rules just before workers retire, is unconscionable; moreover, it should be criminal. This bill's failure to address the serious concerns many workers have about their pensions is simply unacceptable.

Furthermore, this body's continued unwillingness to allow sufficient debate on significant issues is a practice that must end—and end soon. By disallowing debate on important amendments, we are failing to live up to our constituents' expectations. Our constituents sent us to Washington to discuss the nation's difficult issues and to debate these issues on their merits. Today, the important issue of whether we would extend unemployment benefits, currently set to expire at the end of the month, was not discussed. When we fail to allow discussion of important issues we are failing the American people.

I vote in opposition of the ''pension security act'' for its failure to address the pressing needs of the American people today. I earnestly hope that consideration of future bills will include substantial debate on all of the issues that warrant attention, not just those that are easy to talk about.

Mr. KIND. Mr. Speaker, the Education and Workforce Committee, of which I am a member, recently passed H.R. 1000, legislation to protect workers hard earned pensions as well as expanding their retirement savings. While the bill will not necessarily end all corruption and abuse in our Nation's pension system, I feel that it is a step in the right direction.

As we all know over the past year, thousands of Enron, Global Crossing and WorldCom employees, stockholders, and their families saw their life savings disappear. While their nest eggs were being crushed, top executives were selling stock at top dollar and the auditors were shredding documents. These recent scandals shook the foundation of our country's private pension system and caused many people to wonder if the same thing could happen to them. Today, 46 million Americans participate in 401(k) and other pension programs with more then $4 trillion invested in the private pension system.

Congress has a responsibility to improve retirement security and restore confidence in the pension system for millions of Americans. In 1974, Congress enacted the Employee Retirement Income Security Act (ERISA) to provide protection of pension benefits for America's private sector employees. While ERISA made great strides, the growth of 401(k) plans and increased participation in the securities markets call for improved safeguards to protect these individually controlled pension accounts.

Our Democratic substitute includes important provisions that should be included in the underlying bill. For example, the Miller bill seeks parity of benefits for executives and rank-in-file workers by closing a current loophole that gives special treatment for executive pension plans. In addition, the substitute requires that executive compensation packages, including pensions, are approved by the board of directors and that shareholders and employees are notified of any new benefits awarded to executives 100 days before their adoption.

While I would prefer that the legislation on the floor today contain some of the provisions included in the Miller substitute, H.R. 1000 ultimately provides employees more control and decisionmaking over their 401(k) plans. Pension reform must be carefully done so as not to impose such onerous new restrictions that employers would be unwilling to offer pension plans, or might be encouraged to discontinue the plans they already offer.

Specifically H.R. 3762 would allow employees to sell their company-contributed stock after three years; ensures that corporate executives are held to the same restrictions as average American workers during ''lockdown'' periods, provide workers quarterly statements about their investments and their rights to diversify them, makes certain that employers assume full fiduciary responsibility during ''lockdown'' periods; and expand workers' access to investment advice.

These are common sense reforms that will help employees make better, more informed investment choices to prepare for their golden years. The recent corporate scandals exposed weaknesses in our pension laws that could jeopardize many workers retirement savings.

Mr. Speaker, hardworking Americans should not lose all of their retirement savings due to the wrong-doing of corporate executives and loopholes in our pension laws. This legislation, while not perfect, will bring much needed improvements to our private pension system and help millions of American workers save for a happy and healthy retirement.

Mr. EVERETT. Mr. Speaker, I rise in support of this legislation to improve pension security for American workers. However, I come to the floor today to express my serious concerns about the actions of some corporate decision makers, which has resulted in the sometimes criminal raiding and robbing of pension funds. I fear that we have not seen the last of the corporate malfeasance exhibited by the Enrons, Worldcoms, Global Crossings and HealthSouths. It is clear to me that consumer confidence in the American economy will not improve until corporate governance in America changes.

I am concerned about what appears to be a growing number of executives in America who do not feel they should be accountable to their shareholders or employees. Moreover, some of these same corporate executives have been walking the halls of Congress looking for a taxpayer bailout for their failing industries. The sad fact is some continue to demand and receive outrageous salaries and perks while their companies flounder and, in some cases, face civil and criminal investigations for fraud and corruption.

One of the most disturbing facts of these misguided or criminal actions by corporate leaders is that their employees see their hard-earned profit sharing plans disappear. The corporate ''rock star'' rides off with his guaranteed benefits package intact, while the workers and shareholders take it on the chin. Their investments and savings, tied to corporate growth and built up over the years, have vanished. Plans of retirement are halted, either permanently or indefinitely; and many workers find themselves forced to work in their golden years.

Mr. Speaker, this legislation will do much to improve the security of private pension funds, but until the actions of corporate boardrooms reflect a new sense of responsibility and accountability to their employees and investors, consumer confidence in our economy will be a long time in coming.

Mr. DAVIS of Illinois. Mr. Speaker, I rise today in opposition to H.R. 1000, the ''Pension Security Act.'' Last year, our country was in disbelief to witness the scandals that occurred in corporate America. We all heard the countless stories of workers who lost everything—from their jobs, their homes to their retirement savings. And then we heard the stories of the executives and the CEOs of the corporations who were still living in their million dollar homes with no change to their luxurious lifestyle.

Not only did America lose confidence in corporations or begin to question their employer, America began to lose confidence in the market, and our economy has paid the price. As Representatives of the American workers, we must ensure that this does not occur again. We must ensure that all of our workers are protected, especially our older workers. Older workers should not be penalized for their dedication and years of hard work. We also need to ensure that workers be active participants on their pension boards, receive independent investment advice, and should not have a significant wait period to diversify their own money.

We all know the Enron story, the Tyco story, the WorldCom story. And America knows of these stories, too. Let's show America that we are putting an end to these sagas! Let's stand strong in support of workers, in obtaining jobs for workers and putting in safeguards that would prevent our workers pensions from disappearing.

Mr. SAM JACKSON of Texas. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. All time for debate on the bill has expired.

□ 1430

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. ANDREWS

Mr. ANDREWS. Mr. Speaker, as the designee of the ranking member, I offer an amendment in the nature of a substitute.

The SPEAKER pro tempore (Mr. LINDER). The Clerk will designate the amendment in the nature of a substitute.

The text of the amendment in the nature of a substitute is as follows:

Amendment in the nature of a substitute offered by Mr. ANDREWS:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Pension Fairness Act of 2003''.

(b) TABLE OF CONTENTS.—The table of contents is as follows:

TITLE I—IMPROVEMENTS IN DISCLOSURE

SEC. 101. PENSION BENEFIT INFORMATION.

(a) PENSION BENEFIT STATEMENTS REQUIRED ON PERIODIC BASIS.—

(1) IN GENERAL.—Subsection (a) of section 105 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1025) is amended—

(A) by striking ''shall furnish to any plan participant or beneficiary who so requests in writing,'' and inserting ''shall furnish at least once every 3 years, in the case of a participant in a defined benefit plan who has attained age 35, and annually, in the case of an individual account plan, to each plan participant, and shall furnish to any plan participant or beneficiary who so requests,'', and

(B) by adding at the end the following flush sentence:

''Information furnished under the preceding sentence to a participant in a defined benefit plan (other than at the request of the participant) may be based on reasonable estimates determined under regulations prescribed by the Secretary.''.

(2) MODEL STATEMENT.—Section 105 of such Act (29 U.S.C. 1025) is amended by adding at the end the following new subsection:

''(e)(1) The Secretary of Labor shall develop a model benefit statement which shall be used by plan administrators in complying with the requirements of subsection (a). Such statement shall include—

''(A) the amount of nonforfeitable accrued benefits as of the statement date which is payable at normal retirement age under the plan,

''(B) the amount of accrued benefits which are forfeitable but which may become nonforfeitable under the terms of the plan,

''(C) the amount or percentage of any reduction due to integration of the benefit with the participant's Social Security benefits or similar governmental benefits,

''(D) information on early retirement benefit and joint and survivor annuity reductions, and

''(E) in the case of an individual account plan, the percentage of the net return on investment of plan assets for the preceding plan year (or, with respect to investments directed by the participant, the net return on investment of plan assets for such year so directed), itemized with respect to each type of investment, and, stated separately, the administrative and transaction fees incurred in connection with each such type of investment, and

''(F) in the case of an individual account plan, the amount and percentage of assets in the individual account that consists of employer securities and employer real property (as defined in paragraphs (1) and (2), respectively, of section 407(d)), as determined as of the most recent valuation date of the plan.

''(2) The Secretary shall also develop a separate notice, which shall be included by the plan administrator with the information furnished pursuant to subsection (a), which advises participants and beneficiaries of generally accepted investment principles, including principles of risk management and diversification for long-term retirement security and the risks of holding substantial assets in a single asset such as employer securities.''.

(3) RULE FOR MULTIEMPLOYER PLANS.—Subsection (d) of section 105 of such Act (29 U.S.C. 1025) is amended to read as follows:

''(d) Each administrator of a plan to which more than 1 unaffiliated employer is required to contribute shall furnish to any plan participant or beneficiary who so requests in writing, a statement described in subsection (a).''.

(b) DISCLOSURE OF BENEFIT CALCULATIONS.—

(1) IN GENERAL.—Section 105 of such Act (as amended by subsection (a)) is amended further—

(A) by redesignating subsections (b), (c), (d), and (e) as subsections (c), (d), (e), and (f), respectively; and

(B) by inserting after subsection (a) the following new subsection:

''(b)(1) In the case of a participant or beneficiary who is entitled to a distribution of a benefit under an employee pension benefit plan, the administrator of such plan shall provide to the participant or beneficiary the information described in paragraph (2) upon the written request of the participant or beneficiary.

''(2) The information described in this paragraph includes—

''(A) a worksheet explaining how the amount of the distribution was calculated and stating the assumptions used for such calculation,

''(B) upon written request of the participant or beneficiary, any documents relating to the calculation (if available), and

''(C) such other information as the Secretary may prescribe.

Any information provided under this paragraph shall be in a form calculated to be understood by the average plan participant.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 101(a)(2) of such Act (29 U.S.C. 1021(a)(2)) is amended by striking ''105(a) and (c)'' and inserting ''105(a), (b), and (d)''.

(B) Section 105(c) of such Act (as redesignated by paragraph (1)(A) of this subsection) is amended by inserting ''or (b)'' after ''subsection (a)''.

(C) Section 106(b) of such Act (29 U.S.C. 1026(b)) is amended by striking ''sections 105(a) and 105(c)'' and inserting ''subsections (a), (b), and (d) of section 105''.

(c) AMENDMENTS TO INTERNAL REVENUE CODE OF 1986.—

(1) IN GENERAL.—Chapter 43 of the Internal Revenue Code of 1986 (relating to qualified

pension, etc., plans) is amended by adding at the end the following new section:

"SEC. 4980G. FAILURE OF APPLICABLE PLANS TO PROVIDE NOTICE OF GENERALLY ACCEPTED INVESTMENT PRINCIPLES.

''(a) IMPOSITION OF TAX.—There is hereby imposed a tax on the failure of any applicable pension plan to meet the requirements of subsection (e) with respect to any applicable individual.

''(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) on any failure with respect to any applicable individual shall be $100 for each day in the noncompliance period with respect to such failure.

''(c) LIMITATIONS ON AMOUNT OF TAX.—

''(1) TAX NOT TO APPLY TO FAILURES CORRECTED WITHIN 30 DAYS.—No tax shall be imposed by subsection (a) on any failure if—

''(A) any person subject to liability for the tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), and

''(B) such person provides the notice described in subsection (e) during the 30-day period beginning on the first date such person knew, or exercising reasonable diligence should have known, that such failure existed.

''(2) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—

''(A) IN GENERAL.—If the person subject to liability for tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e) and paragraph (1) is not otherwise applicable, the tax imposed by subsection (a) for failures during the taxable year of the employer (or, in the case of a multiemployer plan, the taxable year of the trust forming part of the plan) shall not exceed $500,000. For purposes of the preceding sentence, all multiemployer plans of which the same trust forms a part shall be treated as 1 plan.

''(B) TAXABLE YEARS IN THE CASE OF CERTAIN CONTROLLED GROUPS.—For purposes of this paragraph, if all persons who are treated as a single employer for purposes of this section do not have the same taxable year, the taxable years taken into account shall be determined under principles similar to the principles of section 1561.

''(3) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive or otherwise inequitable relative to the failure involved.

''(d) LIABILITY FOR TAX.—The following shall be liable for the tax imposed by subsection (a):

''(1) In the case of a plan other than a multiemployer plan, the employer.

''(2) In the case of a multiemployer plan, the plan.

''(e) NOTICE OF GENERALLY ACCEPTED INVESTMENT PRINCIPLES.—

''(1) IN GENERAL.—The plan administrator of an applicable pension plan shall provide notice of generally accepted investment principles, including principles of risk management and diversification, to each applicable individual.

''(2) NOTICE.—The notice required by paragraph (1) shall be written in a manner calculated to be understood by the average plan participant and shall provide sufficient information (as determined in accordance with rules or other guidance adopted by the Secretary) to allow applicable individuals to understand generally accepted investment principles, including principles of risk management and diversification.

''(3) TIMING OF NOTICE.—The notice required by paragraph (1) shall be provided upon enrollment of the applicable individual in such plan and at least once per plan year thereafter.

''(4) FORM AND MANNER OF NOTICE.—The notice required by paragraph (1) shall be in writing, except that such notice may be in electronic or other form to the extent that such form is reasonably accessible to the applicable individual.

''(f) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) APPLICABLE INDIVIDUAL.—The term 'applicable individual' means with respect to an applicable pension plan—

''(A) any participant in the applicable pension plan,

''(B) any beneficiary who is an alternate payee (within the meaning of section 414(p)(8)) under an applicable qualified domestic relations order (within the meaning of section 414(p)(1)(A)), and

''(C) any beneficiary of a deceased participant or alternate payee described in subparagraph (A) or (B), as the case may be,

who has an accrued benefit under the plan and who is entitled to direct the investment (or hypothetical investment) of some or all of such accrued benefit.

''(2) APPLICABLE PENSION PLAN.—The term 'applicable pension plan' means—

''(A) a plan described in section 219(g)(5)(A) (other than in clause (iii) thereof), and

''(B) an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A),

which permits any participant to direct the investment of some or all of his account in the plan or under which the accrued benefit of any participant depends in whole or in part on hypothetical investments directed by the participant.''.

(1) CLERICAL AMENDMENT.—The table of sections for chapter 43 of such Code is amended by adding at the end the following new item:

''Sec. 4980G. Failure of applicable plans to provide notice of generally accepted investment principles.''.

(3) EFFECTIVE DATE.—

(A) IN GENERAL.—The amendments made by this subsection shall take effect 60 days after the adoption of rules or other guidance to carry out the amendments made by this subsection, which shall include a model notice of generally accepted investment principles, including principles of risk management and diversification.

(B) MODEL INVESTMENT PRINCIPLES.—For purposes of subparagraph (A), not later than 120 days after the date of the enactment of this Act, the Secretary of the Treasury, in consultation with the Secretary of Labor, shall issue rules or other guidance and a model notice which meets the requirements of section 4980G of the Internal Revenue Code of 1986 (as added by this section).

SEC. 102. IMMEDIATE WARNING OF EXCESSIVE STOCK HOLDINGS.

Section 105 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1025) (as amended by section 101 of this Act) is amended further by adding at the end the following new subsection:

''(g)(1) Upon receipt of information by the plan administrator of an individual account plan indicating that the individual account of any participant which had not been excessively invested in employer securities is excessively invested in such securities (or that such account, as initially invested, is excessively invested in employer securities), the plan administrator shall immediately provide to the participant a separate, written statement—

''(A) indicating that the participant's account has become excessively invested in employer securities,

''(B) setting forth the notice described in subsection (e)(7), and

''(C) referring the participant to investment education materials and investment advice which shall be made available by or under the plan.

In any case in which such a separate, written statement is required to be provided to a participant under this paragraph, each statement issued to such participant pursuant to subsection (a) thereafter shall also contain such separate, written statement until the plan administrator is made aware that such participant's account has ceased to be excessively invested in employer securities or the employee, in writing, waives the receipt of the notice and acknowledges understanding the importance of diversification.

''(2) Each notice required under this subsection shall be provided in a form and manner which shall be prescribed in regulations of the Secretary. Such regulations shall provide for inclusion in the notice a prominent reference to the risks of large losses in assets available for retirement from excessive investment in employer securities.

''(3) For purposes of paragraph (1), a participant's account is 'excessively invested' in employer securities if more than 10 percent of the balance in such account is invested in employer securities (as defined in section 407(d)(1)).''.

SEC. 103. REPORT TO PARTICIPANTS AND BENEFICIARIES OF TRADES IN EMPLOYER SECURITIES.

(a) IN GENERAL.—Section 104 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1024) is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following new subsection:

''(d)(1) In any case in which assets in the individual account of a participant or beneficiary under an individual account plan include employer securities, if any person engages in a transaction constituting a direct or indirect purchase or sale of employer securities and—

''(A) such transaction is required under section 16 of the Securities Exchange Act of 1934 to be reported by such person to the Securities and Exchange Commission, or

''(B) such person is a named fiduciary of the plan,

such person shall comply with the requirements of paragraph (2).

''(2) A person described in paragraph (1) complies with the requirements of this paragraph in connection with a transaction described in paragraph (1) if such person provides to the plan administrator of the plan a written notification of the transaction not later than 1 business day after the date of the transaction.

''(3)(A) If the plan administrator is made aware, on the basis of notifications received pursuant to paragraph (2) or otherwise, that the proceeds from any transaction described in paragraph (1), constituting direct or indirect sales of employer securities by any person described in paragraph (1), exceed $100,000, the plan administrator of the plan shall provide to each participant and beneficiary a notification of such transaction. Such notification shall be in writing, except that such notification may be in electronic or other form to the extent that such form is reasonably accessible to the participant or beneficiary.

''(B) In any case in which the proceeds from any transaction described in paragraph (1) (with respect to which a notification has not been provided pursuant to this paragraph), together with the proceeds from any other such transaction or transactions described in paragraph (1) occurring during the preceding one-year period, constituting direct or indirect sales of employer securities

by any person described in paragraph (1), exceed (in the aggregate) $100,000, such series of transactions by such person shall be treated as a transaction described in subparagraph (A) by such person.

''(C) Each notification required under this paragraph shall be provided as soon as practicable, but not later than 3 business days after receipt of the written notification or notifications indicating that the transaction (or series of transactions) requiring such notice has occurred.

''(4) Each notification required under paragraph (2) or (3) shall be made in such form and manner as may be prescribed in regulations of the Secretary and shall include the number of shares involved in each transaction and the price per share, and the notification required under paragraph (3) shall be written in language designed to be understood by the average plan participant. The Secretary may provide by regulation, in consultation with the Securities and Exchange Commission, for exemptions from the requirements of this subsection with respect to specified types of transactions to the extent that such exemptions are consistent with the best interests of plan participants and beneficiaries. Such exemptions may relate to transactions involving reinvestment plans, stock splits, stock dividends, qualified domestic relations orders, and similar matters.

''(5) For purposes of this subsection, the term 'employer security' has the meaning provided in section 407(d)(1).''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to transactions occurring after 90 days after the date of the enactment of this Act.

SEC. 104. ENFORCEMENT OF INFORMATION AND DISCLOSURE REQUIREMENTS.

(a) IN GENERAL.—Section 502(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(c)) is amended—

(1) by redesignating paragraph (7) as paragraph (8); and

(2) by inserting after paragraph (6) the following new paragraph:

''(7) The Secretary may assess a civil penalty against any person required to provide any notification under the provisions of section 104(d), any statement under the provisions of subsection (a), (d), or (f) of section 105, any information under the provisions of section 404(c)(4), or any notice under the provisions of section 404(e)(1) of up to $1,000 a day from the date of any failure by such person to provide such notification, statement, information, or notice in accordance with such provisions.''.

(b) CONFORMING AMENDMENT.—Section 502(a)(6) of such Act (29 U.S.C. 1132(a)(6)) (as amended by section 102(b)) is amended further by striking ''(5), or (6)'' and inserting ''(5), (6), or (7)''.

TITLE II—FREEDOM TO MAKE INVESTMENT DECISIONS WITH PLAN ASSETS

SEC. 201. AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.

(a) IN GENERAL.—Subsection (a) of section 401 of the Internal Revenue Code of 1986 (relating to requirements for qualification) is amended by adding at the end the following new paragraph:

''(35) DIVERSIFICATION REQUIREMENTS FOR DEFINED CONTRIBUTION PLANS THAT HOLD EMPLOYER SECURITIES.—

''(A) IN GENERAL.—In the case of a defined contribution plan described in this subsection that includes a trust which is exempt from tax under section 501(a) and which holds employer securities that are readily tradable on an established securities market, such trust shall not constitute a qualified trust under this section unless such plan meets the requirements of subparagraphs (B) and (C).

''(B) ELECTIVE DEFERRALS INVESTED IN EMPLOYER SECURITIES.—

''(i) IN GENERAL.—In the case of the portion of the account attributable to elective deferrals which is invested in employer securities, a plan meets the requirements of this subparagraph if each applicable individual in such plan may elect to direct the plan to divest any portion of such securities in the individual's account and to reinvest an equivalent amount in other investment options which meet the requirements of subparagraph (D). The preceding sentence shall apply to the extent that the amount attributable to reinvested portion exceeds the amount to which a prior election under this subparagraph or paragraph (28) applies.

''(ii) APPLICABLE INDIVIDUAL.—For purposes of this subparagraph, the term 'applicable individual' means—

''(I) any participant in the plan,

''(II) any beneficiary who is an alternate payee (within the meaning of section 414(p)(8)) under an applicable qualified domestic relations order (within the meaning of section 414(p)(1)(A)), and

''(III) any beneficiary of a deceased participant or alternate payee.

''(C) OTHER EMPLOYER CONTRIBUTIONS.—

''(i) IN GENERAL.—In the case of the portion of the account attributable to employer contributions (other than elective deferrals) which is invested in employer securities, a plan meets the requirements of this subparagraph if each qualified participant in the plan may elect to direct the plan to divest any portion of such securities in the participant's account and to reinvest an equivalent amount in other investment options which meet the requirements of subparagraph (E). The preceding sentence shall apply to the extent that the amount attributable to such reinvested portion exceeds the amount to which a prior election under this subparagraph or paragraph (28) applies.

''(ii) QUALIFIED PARTICIPANT.—For purposes of this subparagraph, the term 'qualified participant' means—

''(I) any participant in the plan who has completed at least 3 years of service (as determined under section 411(a)) under the plan,

''(II) any beneficiary who, with respect to a participant who met the service requirement in subclause (I), is an alternate payee (within the meaning of section 414(p)(8)) under an applicable qualified domestic relations order (within the meaning of section 414(p)(1)(A)), and

''(III) any beneficiary of a deceased participant who met the service requirement in subclause (I) or alternate payee described in subclause (II).

''(D) INVESTMENT OPTIONS.—The requirements of this subparagraph are met if the plan offers not less than 3 investment options (not inconsistent with regulations prescribed by the Secretary) other than employer securities.

''(E) PRESERVATION OF AUTHORITY OF PLAN TO LIMIT INVESTMENT.—Nothing in this paragraph shall be construed to limit the authority of a plan to impose limitations on the portion of plan assets in any account which may be invested in employer securities.

''(E) OTHER DEFINITIONS AND RULES.—For purposes of this paragraph—

''(i) EMPLOYER SECURITIES.—The term 'employer securities' shall have the meaning given such term by section 407(d)(1) of the Employee Retirement Income Security Act of 1974.

''(ii) ELECTIVE DEFERRALS.—For purposes of this subparagraph, the term 'elective deferrals' means an employer contribution described in section 402(g)(3)(A) and any employee contribution.

''(iii) ELECTION.—Elections under this paragraph shall be not less frequently than quarterly.

''(iv) EMPLOYEE STOCK OWNERSHIP PLAN.—The term 'employee stock ownership plan' shall have the same meaning given to such term by section 4975(e)(7).''.

(b) CONFORMING AMENDMENTS.—

(1) Section 401(a)(28) of such Code is amended by adding at the end the following new subparagraph:

''(D) APPLICATION.—This paragraph shall not apply with respect to employer securities which are readily tradable on an established securities market.''.

(2) Section 409(h)(7) of such Code is amended by inserting at the end ''or subparagraph (B) or (C) of section 401(a)(35)''.

(3) Section 4975(e)(7) of such Code is amended by adding at the end the following new sentence: ''A plan shall not fail to be treated as an employee stock ownership plan merely because the plan meets the requirements of section 401(a)(35) (or provides greater diversification rights) or because participants in such plan exercise diversification rights under such section (or greater diversification rights available under the plan).''.

(4) Section 4980(c)(3)(A) of such Code is amended by striking ''if—'' and all that follows and inserting ''if the requirements of subparagraphs (B) and (C) are met.''.

(5) Section 407 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1107) is amended by adding at the end the following new subsection:

''(g) Notwithstanding section 408(e) or any other provision of this title, an individual account plan may not include provisions that do not meet the requirements of section 401(a)(35)(B) of the Internal Revenue Code of 1986.''.

SEC. 202. AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104) is amended by adding at the end the following new subsection:

''(e) DIVERSIFICATION OF INVESTMENT OF ACCOUNT ASSETS HELD UNDER INDIVIDUAL ACCOUNT PLANS.—

''(1) IN GENERAL.—In the case of an individual account plan under which a participant or beneficiary is permitted to exercise control over assets in his or her account, with respect to the assets in the account to which the participant or beneficiary has a nonforfeitable right and which consist of employer securities which are readily tradable on an established securities market, the plan shall meet the requirements of paragraphs (2), (3), (4), (5), (6), and (7).

''(2) ASSETS ATTRIBUTABLE TO EMPLOYEE CONTRIBUTIONS.—In the case of any portion of the account assets described in paragraph (1) which is attributable to employee contributions, there shall be no restrictions on the right of a participant or beneficiary to allocate the assets in such portion to any investment option provided under the plan.

''(3) ELECTIVE DEFERRALS INVESTED IN EMPLOYER SECURITIES.—

''(A) IN GENERAL.—In the case of the portion of the account assets described in paragraph (1) which is attributable to elective deferrals and is invested in employer securities, a plan meets the requirements of this paragraph if each applicable individual in such plan may elect to direct the plan to divest any portion of such securities in the individual's account and to reinvest an equivalent amount in other investment options which meet the requirements of paragraph (5). The preceding sentence shall apply to the extent that the amount attributable to such

reinvested portion exceeds the amount to which a prior election under this paragraph or section 401(a)(28) of the Internal Revenue Code of 1986 applies.

''(B) APPLICABLE INDIVIDUAL.—For purposes of this paragraph, the term 'applicable individual' means—

''(i) any participant in the plan,

''(ii) any beneficiary who is an alternate payee (within the meaning of section 206(d)(3)(K)) under an applicable qualified domestic relations order (within the meaning of section 206(d)(3)(B)(i)), and

''(iii) any beneficiary of a deceased participant or alternate payee.

''(4) OTHER EMPLOYER CONTRIBUTIONS.—

''(A) IN GENERAL.—In the case of the portion of the account assets described in paragraph (1) which is attributable employer contributions (other than elective deferrals) and is invested in employer securities, a plan meets the requirements of this paragraph if each qualified participant in the plan may elect to direct the plan to divest any portion of such securities in the participant's account and to reinvest an equivalent amount in other investment options which meet the requirements of paragraph (6). The preceding sentence shall apply to the extent that the amount attributable to such reinvested portion exceeds the amount to which a prior election under this paragraph or section 401(a)(28) of such Code applies.

''(B) QUALIFIED PARTICIPANT.—For purposes of this paragraph, the term 'qualified participant' means—

''(i) any participant in the plan who has completed at least 3 years of service (as determined under section 203(a)) under the plan,

''(ii) any beneficiary who, with respect to a participant who met the service requirement in clause (i), is an alternate payee (within the meaning of section 206(d)(3)(K)) under an applicable qualified domestic relations order (within the meaning of section 206(d)(3)(B)(i)), and

''(iii) any beneficiary of a deceased participant who met the service requirement in clause (i) or alternate payee described in clause (ii).

''(5) INVESTMENT OPTIONS.—The requirements of this paragraph are met if, with respect to the account assets described in paragraph (1), the plan offers not less than 3 investment options (not inconsistent with regulations prescribed by the Secretary) other than employer securities.

''(6) PROMPT COMPLIANCE WITH DIRECTIONS TO ALLOCATE INVESTMENTS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), a plan meets the requirements of this paragraph with respect to plan assets described in paragraph (1) if the plan provides that, within 5 days after the date of any election by a participant or beneficiary allocating any such assets to any investment option provided under the plan, the plan administrator shall take such actions as are necessary to effectuate such allocation.

''(B) SPECIAL RULE FOR PERIODIC ELECTIONS.—In any case in which the plan provides for elections periodically during prescribed periods, the 5-day period described in subparagraph (A) shall commence at the end of each such prescribed period.

''(7) NOTICE OF RIGHTS AND OF IMPORTANCE OF DIVERSIFICATION.—A plan meets the requirements of this paragraph if the plan provides that, not later than 30 days prior to the date on which the right of a participant under the plan to his or her accrued benefit becomes nonforfeitable, the plan administrator shall provide to such participant and his or her beneficiaries a written notice—

''(A) setting forth their rights under this section with respect to the accrued benefit, and

''(B) describing the importance of diversifying the investment of account assets.

''(8) PRESERVATION OF AUTHORITY OF PLAN TO LIMIT INVESTMENT.—Nothing in this subsection shall be construed to limit the authority of a plan to impose limitations on the portion of plan assets in any account which may be invested in employer securities.

''(9) OTHER DEFINITIONS AND RULES.—For purposes of this subsection—

''(A) EMPLOYER SECURITIES.—The term 'employer securities' shall have the meaning given such term by section 407(d)(1) of the Employee Retirement Income Security Act of 1974.

''(B) ELECTIVE DEFERRALS.—The term 'elective deferrals' means an employer contribution described in section 402(g)(3)(A) of such Code and any employee contribution.

''(C) ELECTION.—Elections under this subsection shall be not less frequently than quarterly.

''(D) EMPLOYEE STOCK OWNERSHIP PLAN.—The term 'employee stock ownership plan' shall have the same meaning given to such term by section 4975(e)(7) of such Code.

SEC. 203. RECOMMENDATIONS RELATING TO NON-PUBLICLY TRADED STOCK.

Within 1 year after the date of the enactment of this Act, the Secretary of Labor and the Secretary of the Treasury shall jointly transmit to the Committee on Education and the Workforce and the Committee on Ways and Means of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate their recommendations regarding legislative changes relating to treatment, under section 404(e) of the Employee Retirement Income Security Act of 1974 and section 401(a)(35) of the Internal Revenue Code of 1986 (as added by this title), of individual account plans under which a participant or beneficiary is permitted to exercise control over assets in his or her account, in cases in which such assets do not include employer securities which are readily tradable under an established securities market.

SEC. 204. EFFECTIVE DATE OF TITLE.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this title shall apply with respect to plan years beginning after December 31, 2003.

(b) EXCEPTION.—The amendments made by this section shall not apply to employer securities held by an employee stock ownership plan which are not subject to section 401(a)(28) of the Internal Revenue Code of 1986 by reason of section 1175(a)(2) of the Tax Reform Act of 1986 (100 Stat. 2519).

(c) DELAYED EFFECTIVE DATE OF EXISTING HOLDINGS.—In any case in which a portion of the nonforfeitable accrued benefit of a participant or beneficiary is held in the form of employer securities (as defined in section 407(d)(1) of the Employee Retirement Income Security Act of 1974) immediately before the first date of the first plan year to which the amendments made by this title apply, such portion shall be taken into account only with respect to plan years beginning on or after January 1, 2005.

TITLE III—EMPLOYEE REPRESENTATION

SEC. 301. PARTICIPATION OF PARTICIPANTS IN TRUSTEESHIP OF INDIVIDUAL ACCOUNT PLANS.

(a) IN GENERAL.—Section 403(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1103(a)) is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(2) by inserting ''(1)'' after ''(a)''; and

(3) by adding at the end the following new paragraph:

''(2)(A) The assets of a single-employer plan which is an individual account plan and under which some or all of the assets are derived from employee contributions shall be held in trust by a joint board of trustees, which shall consist of two or more trustees representing on an equal basis the interests of the employer or employers maintaining the plan and the interests of the participants and their beneficiaries and having equal voting rights.

''(B)(i) Except as provided in clause (ii), in any case in which the plan is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and one or more employers, the trustees representing the interests of the participants and their beneficiaries shall be designated by such employee organizations.

''(ii) Clause (i) shall not apply with respect to a plan described in such clause if the employee organization (or all employee organizations, if more than one) referred to in such clause file with the Secretary, in such form and manner as shall be prescribed in regulations of the Secretary, a written waiver of their rights under clause (i).

''(iii) In any case in which clause (i) does not apply with respect to a single-employer plan because the plan is not described in clause (i) or because of a waiver filed pursuant to clause (ii), the trustee or trustees representing the interests of the participants and their beneficiaries shall be selected by the plan participants in accordance with regulations of the Secretary.

''(C) An individual shall not be treated as ineligible for selection as trustee solely because such individual is an employee of the plan sponsor, except that the employee so selected may not be a highly compensated employee (as defined in section 414(q) of the Internal Revenue Code of 1986).

''(D) The Secretary shall provide by regulation for the appointment of a neutral individual, in accordance with the procedures under section 203(f) of the Labor Management Relations Act, 1947 (29 U.S.C. 173(f)), to cast votes as necessary to resolve tie votes by the trustees.''.

(b) REGULATIONS.—The Secretary of Labor shall prescribe the initial regulations necessary to carry out the provisions of the amendments made by this section not later than 90 days after the date of the enactment of this Act.

TITLE IV—INCREASED ACCOUNTABILITY

SEC. 401. BONDING OR INSURANCE ADEQUATE TO PROTECT INTEREST OF PARTICIPANTS AND BENEFICIARIES.

Section 412 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1112) is amended by adding at the end the following new subsection:

''(f) Notwithstanding the preceding provisions of this section, each fiduciary of an individual account plan shall be bonded or insured, in accordance with regulations which shall be prescribed by the Secretary, in an amount sufficient to ensure coverage by the bond or insurance of financial losses due to any failure to meet the requirements of this part.''.

SEC. 402. LIABILITY FOR BREACH OF FIDUCIARY DUTY.

(a) ADDITIONAL EQUITABLE OR REMEDIAL RELIEF.—Section 409 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1109) is amended—

(1) by redesignating subsection (b) as subsection (c);

(2) in subsection (a), by striking '', including removal of such fiduciary''; and

(3) by inserting after subsection (a) the following new subsection:

''(b) The equitable or remedial relief referred to in subsection (a) may include (but is not limited to) a court order removing the

fiduciary from the plan referred to in subsection (a) and a court order prohibiting, conditionally or unconditionally, and permanently or for such period of time as the court shall determine, the fiduciary from serving—

''(1) as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, employee, or representative in any capacity of any employee benefit plan,

''(2) as a consultant or adviser to an employee benefit plan, including but not limited to any entity whose activities are in whole or substantial part devoted to providing goods or services to any employee benefit plan, or

''(3) in any capacity that involves decision-making authority or custody or control of the moneys, funds, assets, or property of any employee benefit plan.''.

(b) LIABILITY FOR PARTICIPATING IN OR CONCEALING FIDUCIARY BREACH IN CONNECTION WITH INDIVIDUAL ACCOUNT PLANS.—

(1) APPLICATION TO PARTICIPANTS AND BENEFICIARIES OF 401(k) PLANS.—

(A) IN GENERAL.—Part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1101 et seq.) is amended by adding after section 409 the following new section:

''SEC. 409A. LIABILITY FOR BREACH OF FIDUCIARY DUTY IN 401(k) PLANS.

''(a) Any person who is a fiduciary with respect to an individual account plan that includes a qualified cash or deferred arrangement under section 401(k) of the Internal Revenue Code of 1986 who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this title shall be personally liable to make good to each participant and beneficiary of the plan any losses to such participant or beneficiary resulting from each such breach, and to restore to such participant or beneficiary any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary. A fiduciary may also be removed for a violation of section 411 of this Act.

''(b) The right of participants and beneficiaries under subsection (a) to sue for breach of fiduciary duty with respect to an individual account plan that includes a qualified cash or deferred arrangement under section 401(k) of such Code shall be in addition to all existing rights that participants and beneficiaries have under section 409, section 502, and any other provision of this title, and shall not be construed to give rise to any inference that such rights do not already exist under section 409, section 502, or any other provision of this title.

''(c) No fiduciary shall be liable with respect to a breach of fiduciary duty under this title if such breach was committed before he or she became a fiduciary or after he or she ceased to be a fiduciary.''

(B) CONFORMING AMENDMENT.—The table of contents for part 4 of subtitle B of title I of such Act is amended by inserting the following new item after the item relating to section 409:

''Sec. 409A. Liability for breach of fiduciary duty in 401(k) plans.''

(2) INSIDER LIABILITY.—

(A) IN GENERAL.—Section 409 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1109) is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection:

''(b)(1)(A) If an insider with respect to the plan sponsor of an individual account plan that holds employer securities that are readily tradable on an established securities market—

''(i) knowingly participates in a breach of fiduciary responsibility to which subsection (a) applies, or

''(ii) knowingly undertakes to conceal such a breach,

such insider shall be personally liable under this subsection for such breach in the same manner as the fiduciary who commits such breach.

''(B) For purposes of subparagraph (A), the term 'insider' means, with respect to any plan sponsor of a plan to which subparagraph (A) applies—

''(i) any officer or director with respect to the plan sponsor, or

''(ii) any independent qualified public accountant of the plan or of the plan sponsor.

''(3) Any relief provided under this subsection or section 409A—

''(A) if provided to an individual account plan, shall inure to the individual accounts of the affected participants or beneficiaries, and

''(B) if provided to a participant or beneficiary, shall be payable to the individual account plan on behalf of such participant or beneficiary unless such plan has been terminated.''

(B) CONFORMING AMENDMENT.—Section 409(c) of such Act (29 U.S.C. 1109(c)), as redesignated by subparagraph (A), is amended by inserting before the period the following: '', unless such liability arises under subsection (b)''.

(c) MAINTENANCE OF FIDUCIARY LIABILITY.—Section 404(c)(1)(B) of such Act (29 U.S.C. 1104(c)(1)(B)) is amended by inserting before the period the following: '', except that this subparagraph shall not be construed to exempt any fiduciary from liability for any violation of subsection (e)''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to breaches occurring on or after the date of the enactment of this Act.

SEC. 403. PRESERVATION OF RIGHTS OR CLAIMS.

Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132) is amended by adding at the end the following new subsection:

''(n)(1) The rights under this title (including the right to maintain a civil action) may not be waived, deferred, or lost pursuant to any agreement not authorized under this title with specific reference to this subsection.

''(2) Paragraph (1) shall not apply to an agreement providing for arbitration or participation in any other nonjudicial procedure to resolve a dispute if the agreement is entered into knowingly and voluntarily by the parties involved after the dispute has arisen or is pursuant to the terms of a collective bargaining agreement.''.

SEC. 404. OFFICE OF PENSION PARTICIPANT ADVOCACY.

(a) IN GENERAL.—Subtitle A of title III of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 3001 et seq.) is amended by inserting after section 3004 the following new section:

''OFFICE OF PENSION PARTICIPANT ADVOCACY

''SEC. 3005. (a) ESTABLISHMENT.—

''(1) IN GENERAL.—There is established in the Department of Labor an office to be known as the 'Office of Pension Participant Advocacy'.

''(2) PENSION PARTICIPANT ADVOCATE.—The Office of Pension Participant Advocacy shall be under the supervision and direction of an official to be known as the 'Pension Participant Advocate' who shall—

''(A) have demonstrated experience in the area of pension participant assistance, and

''(B) be selected by the Secretary after consultation with pension participant advocacy organizations.

The Pension Participant Advocate shall report directly to the Secretary and shall be entitled to compensation at the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of title 5, United States Code.

''(b) FUNCTIONS OF OFFICE.—It shall be the function of the Office of Pension Participant Advocacy to—

''(1) evaluate the efforts of the Federal Government, business, and financial, professional, retiree, labor, women's, and other appropriate organizations in assisting and protecting pension plan participants, including—

''(A) serving as a focal point for, and actively seeking out, the receipt of information with respect to the policies and activities of the Federal Government, business, and such organizations which affect such participants,

''(B) identifying significant problems for pension plan participants and the capabilities of the Federal Government, business, and such organizations to address such problems, and

''(C) developing proposals for changes in such policies and activities to correct such problems, and communicating such changes to the appropriate officials,

''(2) promote the expansion of pension plan coverage and the receipt of promised benefits by increasing the awareness of the general public of the value of pension plans and by protecting the rights of pension plan participants, including—

''(A) enlisting the cooperation of the public and private sectors in disseminating information, and

''(B) forming private-public partnerships and other efforts to assist pension plan participants in receiving their benefits,

''(3) advocating for the full attainment of the rights of pension plan participants, including by making pension plan sponsors and fiduciaries aware of their responsibilities,

''(4) giving priority to the special needs of low and moderate income participants,

''(5) developing needed information with respect to pension plans, including information on the types of existing pension plans, levels of employer and employee contributions, vesting status, accumulated benefits, benefits received, and forms of benefits, and

''(6) pursuing claims on behalf of participants and beneficiaries and providing appropriate assistance in the resolution of disputes between participants and beneficiaries and pension plans, including assistance in obtaining settlement agreements.

''(c) REPORTS.—

''(1) ANNUAL REPORT.—Not later than December 31 of each calendar year, the Pension Participant Advocate shall report to the Committee on Education and the Workforce and the Committee on Ways and Means of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate on its activities during the fiscal year ending in the calendar year. Such report shall—

''(A) identify significant problems the Advocate has identified,

''(B) include specific legislative and regulatory changes to address the problems, and

''(C) identify any actions taken to correct problems identified in any previous report.

The Advocate shall submit a copy of such report to the Secretary and any other appropriate official at the same time it is submitted to the committees of Congress.

''(2) SPECIFIC REPORTS.—The Pension Participant Advocate shall report to the Secretary or any other appropriate official any time the Advocate identifies a problem which may be corrected by the Secretary or such official.

''(3) REPORTS TO BE SUBMITTED DIRECTLY.—The report required under paragraph (1) shall be provided directly to the committees of Congress without any prior review or comment by the Secretary or any other Federal officer or employee.

''(d) SPECIFIC POWERS.—

''(1) RECEIPT OF INFORMATION.—Subject to such confidentiality requirements as may be appropriate, the Secretary and other Federal officials shall, upon request, provide such information (including plan documents) as may be necessary to enable the Pension Participant Advocate to carry out the Advocate's responsibilities under this section.

''(2) APPEARANCES.—The Pension Participant Advocate may represent the views and interests of pension plan participants before any Federal agency, including, upon request of a participant, in any proceeding involving the participant.

''(3) CONTRACTING AUTHORITY.—In carrying out responsibilities under subsection (b)(5), the Pension Participant Advocate may, in addition to any other authority provided by law—

''(A) contract with any person to acquire statistical information with respect to pension plan participants, and

''(B) conduct direct surveys of pension plan participants.''

(b) CONFORMING AMENDMENT.—The table of contents in section 1 of such Act is amended by inserting after the item relating to section 3004 the following new item:

''Sec. 3051. Office of Pension Participant Advocacy.''.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on January 1, 2004.

SEC. 405. STUDY REGARDING INSURANCE SYSTEM FOR INDIVIDUAL ACCOUNT PLANS.

(a) STUDY.—As soon as practicable after the date of the enactment of this Act, the Pension Benefit Guaranty Corporation shall contract to carry out a study relating to the establishment of an insurance system for individual account plans. In conducting such study, the Corporation shall consider—

(1) the feasibility and impact of such a system, and

(2) options for developing such a system.

(b) REPORT.—Not later than 3 years after the date of the enactment of this Act, the Corporation shall report the results of its study, together with any recommendations for legislative changes, to the Committee on Education and the Workforce and the Committee on Ways and Means of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate.

SEC. 406. EXCISE TAX ON FAILURE OF PENSION PLANS TO PROVIDE NOTICE OF TRANSACTION RESTRICTION PERIODS.

(a) IN GENERAL.—Chapter 43 of the Internal Revenue Code of 1986 (relating to qualified pension, etc., plans) is amended by adding at the end the following new section:

''SEC. 4980H. FAILURE OF APPLICABLE PLANS TO PROVIDE NOTICE OF TRANSACTION RESTRICTION PERIODS.

''(a) IMPOSITION OF TAX.—There is hereby imposed a tax on the failure of any applicable pension plan to meet the requirements of subsection (e) with respect to any applicable individual.

''(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) on any failure with respect to any applicable individual shall be $100 for each day in the noncompliance period with respect to such failure.

''(c) LIMITATIONS ON AMOUNT OF TAX.—

''(1) TAX NOT TO APPLY TO FAILURES CORRECTED AS SOON AS REASONABLY PRACTICABLE.—No tax shall be imposed by subsection (a) on any failure if—

''(A) any person subject to liability for the tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), and

''(B) such person provides the notice described in subsection (e) as soon as reasonably practicable after the first date such person knew, or exercising reasonable diligence should have known, that such failure existed.

''(2) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—

''(A) IN GENERAL.—If the person subject to liability for tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e) and paragraph (1) is not otherwise applicable, the tax imposed by subsection (a) for failures during the taxable year of the employer (or, in the case of a multiemployer plan, the taxable year of the trust forming part of the plan) shall not exceed $500,000. For purposes of the preceding sentence, all multiemployer plans of which the same trust forms a part shall be treated as 1 plan.

''(B) TAXABLE YEARS IN THE CASE OF CERTAIN CONTROLLED GROUPS.—For purposes of this paragraph, if all persons who are treated as a single employer for purposes of this section do not have the same taxable year, the taxable years taken into account shall be determined under principles similar to the principles of section 1561.

''(3) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive or otherwise inequitable relative to the failure involved.

''(d) LIABILITY FOR TAX.—The following shall be liable for the tax imposed by subsection (a):

''(1) In the case of a plan other than a multiemployer plan, the employer.

''(2) In the case of a multiemployer plan, the plan.

''(e) NOTICE OF TRANSACTION RESTRICTION PERIODS.—

''(1) DUTIES OF PLAN ADMINISTRATOR.—In advance of the commencement of any transaction restriction period with respect to an applicable pension plan, the plan administrator shall notify the plan participants and beneficiaries who are affected by such action in accordance with this subsection.

''(2) NOTICE REQUIREMENTS.—

''(A) IN GENERAL.—The notices described in paragraph (1) shall be written in a manner calculated to be understood by the average plan participant and shall include—

''(i) the reasons for the transaction restriction period,

''(ii) an identification of the investments and other rights affected,

''(iii) the expected beginning date and length of the transaction restriction period,

''(iv) in the case of investments affected, a statement that the applicable individual should evaluate the appropriateness of their current investment decisions in light of their inability to direct or diversify assets credited to their accounts during the transaction restriction period, and

''(v) such other matters as the Secretary may require by regulation.

''(B) NOTICE TO PARTICIPANTS AND BENEFICIARIES.—Except as otherwise provided in this subsection, notices described in paragraph (1) shall be furnished to all participants and beneficiaries under the plan to whom the transaction restriction period applies at least 30 days in advance of the transaction restriction period.

''(C) EXCEPTION TO 30-DAY NOTICE REQUIREMENT.—In any case in which—

''(i) a deferral of the transaction restriction period would violate the requirements of subparagraph (A) or (B) of section 404(a)(1) of the Employee Retirement Income Security Act of 1974, and a fiduciary (within the meaning of section 3(21) of such Act) of the plan reasonably so determines in writing, or

''(ii) the inability to provide the 30-day advance notice is due to events that were unforeseeable or circumstances beyond the reasonable control of the plan administrator, and a fiduciary of the plan reasonably so determines in writing,

subparagraph (B) shall not apply, and the notice shall be furnished to all participants and beneficiaries under the plan to whom the transaction restriction period applies as soon as reasonably possible under the circumstances unless such a notice in advance of the termination of the transaction restriction period is impracticable.

''(D) WRITTEN NOTICE.—The notice required to be provided under this subsection shall be in writing, except that such notice may be in electronic or other form to the extent that such form is reasonably accessible to the recipient.

''(E) NOTICE TO ISSUERS OF EMPLOYER SECURITIES SUBJECT TO TRANSACTION RESTRICTION PERIOD.—In the case of any transaction restriction period in connection with an applicable pension plan, the plan administrator shall provide timely notice of such transaction restriction period to the issuer of any employer securities subject to such transaction restriction period.

''(3) EXCEPTION FOR TRANSACTION RESTRICTION PERIODS WITH LIMITED APPLICABILITY.—In any case in which the transaction restriction period applies to 1 or more participants or beneficiaries in connection with a merger, acquisition, divestiture, or similar transaction involving the plan or plan sponsor and occurs solely in connection with becoming or ceasing to be an applicable individual under the plan by reason of such merger, acquisition, divestiture, or transaction, the requirement of this subsection that the notice be provided to all participants and beneficiaries shall be treated as met if the notice required under paragraph (1) is provided to such participants or beneficiaries to whom the transaction restriction period applies as soon as reasonably practicable.

''(4) CHANGES IN LENGTH OF TRANSACTION RESTRICTION PERIOD.—If, following the furnishing of the notice pursuant to this subsection, there is a change in the beginning date or length of the transaction restriction period (specified in such notice pursuant to paragraph (2)(A)(iii)), the administrator shall provide affected participants and beneficiaries notice of the change as soon as reasonably practicable. In relation to the extended transaction restriction period, such notice shall meet the requirements of paragraph (2)(D) and shall specify any material change in the matters referred to in clauses (i) through (v) of paragraph (2)(A).

''(5) REGULATORY EXCEPTIONS.—The Secretary may provide by regulation for additional exceptions to the requirements of this subsection which the Secretary determines are in the interests of participants and beneficiaries.

''(6) GUIDANCE AND MODEL NOTICES.—The Secretary shall issue guidance and model notices which meet the requirements of this subsection.

''(7) TRANSACTION RESTRICTION PERIOD.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'transaction restriction period' means, in connection with an applicable pension plan, any period for which any ability of participants or beneficiaries under the plan, which is otherwise available under the terms of such plan, to direct or diversify assets credited to their accounts, to obtain loans from the plan, or to

obtain distributions from the plan is temporarily suspended, limited, or restricted, if such suspension, limitation, or restriction is for any period of more than 3 consecutive business days.

''(B) EXCLUSIONS.—The term 'transaction restriction period' does not include a suspension, limitation, or restriction—

''(i) which occurs by reason of the application of the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934),

''(ii) which is a change to the plan which provides for a regularly scheduled suspension, limitation, or restriction which is disclosed to participants or beneficiaries through any summary of material modifications, any materials describing specific investment alternatives under the plan, or any changes thereto, or

''(iii) which applies to 1 or more individuals, each of whom is the participant, an alternate payee (as defined in section 414(p)(8)), or any other beneficiary pursuant to a qualified domestic relations order (as defined in section 414(p)(1)).

''(8) APPLICABLE INDIVIDUAL.—For purposes of this section, the term 'applicable individual' means—

''(A) any participant in the applicable pension plan,

''(B) any beneficiary who is an alternate payee (within the meaning of section 414(p)(8)) under an applicable qualified domestic relations order (within the meaning of section 414(p)(1)(A)), and

''(C) any beneficiary of a deceased participant or alternate payee,

who has an accrued benefit under the plan and who is entitled to direct the investment (or hypothetical investment) of some or all of such accrued benefit.

''(9) APPLICABLE PENSION PLAN.—For purposes of this subsection, the term 'applicable pension plan' means—

''(A) a plan described in section 219(g)(5)(A) (other than in clause (iii) thereof), and

''(B) an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A),

which permits any participant to direct the investment of some or all of his account in the plan or under which the accrued benefit of any participant depends in whole or in part on hypothetical investments directed by the participant.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 43 of such Code is amended by adding at the end the following new item:

''Sec. 4980H. Failure of applicable plans to provide notice of transaction restriction periods.''.

(c) EFFECTIVE DATE AND RELATED RULES.—

(1) EFFECTIVE DATE.—The amendments made by this section shall take effect 180 days after the date of the enactment of this Act. Good faith compliance with the requirements of such amendments in advance of the issuance of applicable regulations thereunder shall be treated as compliance with such provisions.

(2) ISSUANCE OF INITIAL GUIDANCE AND MODEL NOTICE.—The Secretary of the Treasury shall, in consultation with the Secretary of Labor, issue initial guidance and a model notice pursuant to section 4980H(e)(6) of the Internal Revenue Code of 1986 (as added by this section) not later than January 1, 2005. Not later than 75 days after the date of the enactment of this Act, the Secretary shall promulgate interim final rules necessary to carry out the amendments made by this section.

(3) PLAN AMENDMENTS.—If any amendment made by this section requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after the effective date of this section, if—

(A) during the period after such amendment made by this section takes effect and before such first plan year, the plan is operated in good faith compliance with the requirements of such amendment made by this section, and

(B) such plan amendment applies retroactively to the period after such amendment made by this section takes effect and before such first plan year.

TITLE V—INVESTMENT ADVICE FOR PARTICIPANTS AND BENEFICIARIES

SEC. 501. INDEPENDENT INVESTMENT ADVICE.

(a) IN GENERAL.—Section 404(c)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(c)(1)) (as amended by section 102(c)) is amended further—

(1) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and by inserting ''(A)'' after ''(c)(1)''; and

(2) by adding at the end the following new subparagraphs:

''(B)(i) In the case of a pension plan described in subparagraph (A) which provides investment in employer securities as at least one option for investment of plan assets at the direction of the participant or beneficiary, such plan shall make available to the participant or beneficiary the services of a qualified fiduciary adviser for purposes of providing investment advice described in section 3(21)(A)(ii) regarding investment in such securities.

''(ii) No person who is otherwise a fiduciary shall be liable by reason of any investment advice provided by a qualified fiduciary adviser pursuant to a request under clause (i) if—

''(I) the plan provides for selection and monitoring of such adviser in a prudent and effective manner,

''(II) such adviser is a named fiduciary under the plan in connection with the provision of such advice, and

''(III) in the provision of the advice, such adviser is not conflicted in connection with the provision of the advice, in accordance with subparagraph (C).

''(C) A qualified fiduciary adviser is not conflicted in the provision of investment advice if, with respect to any product taken into account in determining the asset allocation with respect to which such advice is provided—

''(i) the adviser has no material interest in such product, or

''(ii) the adviser discloses any material interest the adviser has in such product to the recipient of the advice and refers the recipient to an alternative qualified fiduciary adviser made available by the plan under subparagraph (B)(i) who has no material interest in any product taken into account in the recommended asset allocation.

''(D) For purposes of subparagraph (B)—

''(i) The term 'qualified fiduciary adviser' means, with respect to a plan, a person who—

''(I) is a fiduciary of the plan by reason of the provision of qualified investment advice by such person to a participant or beneficiary,

''(II) has no material interest in, and no material affiliation or contractual relationship with any third party having a material interest in, the employer (other than such person's relationship with the employer in the capacity of a qualified fiduciary adviser),

''(III) meets the independence requirements of clause (ii) in connection with investment advice provided by such person pursuant to services rendered pursuant to clause (i),

''(IV) meets the qualifications of clause (iii), and

''(V) meets the additional requirements of clause (iv).

''(ii) A person meets the independence requirements of this clause if—

''(I) the amount of compensation payable to any entity in connection with the provision of the advice is not dependent on any particular product with respect to which the advice is rendered or the value of any such product,

''(II) no recordkeeping is maintained by such person, the plan, the plan sponsor, or any other fiduciary with respect to the plan with respect to which products are recommended by such person,

''(III) such person has no material interest in, and no material affiliation or contractual relationship with any third party having a material interest in, any other person whose analysis, with respect to any security or other property with respect to which the advice is being provided, is employed in developing recommendations included in such advice, and

''(IV) the plan provides for prompt disclosure of material interests and for the services of alternative qualified fiduciary advisers, sufficient to meet the requirements of subparagraph (C).

''(iii) A person meets the qualifications of this subparagraph if such person—

''(I) is registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.),

''(II) if not registered as an investment adviser under such Act by reason of section 203A(a)(1) of such Act (15 U.S.C. 80b–3a(a)(1)), is registered under the laws of the State in which the fiduciary maintains its principal office and place of business, and, at the time the fiduciary last filed the registration form most recently filed by the fiduciary with such State in order to maintain the fiduciary's registration under the laws of such State, also filed a copy of such form with the Secretary,

''(III) is registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

''(IV) is a bank or similar financial institution referred to in section 408(b)(4),

''(V) is an insurance company qualified to do business under the laws of a State, or

''(VI) is any other comparable entity which satisfies such criteria as the Secretary determines appropriate.

''(iv) A person meets the additional requirements of this clause if every individual who is employed (or otherwise compensated) by such person and whose scope of duties includes the provision of qualified investment advice on behalf of such person to any participant or beneficiary is—

''(I) a registered representative of such person,

''(II) an individual described in subclause (I), (II), or (III) of clause (i), or

''(III) such other comparable qualified individual as may be designated in regulations of the Secretary.''.

(b) MAINTENANCE OF FIDUCIARY LIABILITY.—Section 404(c)(1)(B) of such Act (29 U.S.C. 1104(c)(1)(B)) is amended by inserting before the period the following: '', except that this subparagraph shall not be construed to exempt any fiduciary from liability for any violation of this section''.

SEC. 502. TAX TREATMENT OF QUALIFIED RETIREMENT PLANNING SERVICES.

(a) IN GENERAL.—Subsection (m) of section 132 of the Internal Revenue Code of 1986 (defining qualified retirement services) is amended by adding at the end the following new paragraph:

''(4) NO CONSTRUCTIVE RECEIPT.—No amount shall be included in the gross income of any

employee solely because the employee may choose between any qualified retirement planning services provided by a qualified investment advisor and compensation which would otherwise be includible in the gross income of such employee. The preceding sentence shall apply to highly compensated employees only if the choice described in such sentence is available on substantially the same terms to each member of the group of employees normally provided education and information regarding the employer's qualified employer plan.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 403(b)(3)(B) of such Code is amended by inserting ''132(m)(4),'' after ''132(f)(4),''.

(2) Section 414(s)(2) of such Code is amended by inserting ''132(m)(4),'' after ''132(f)(4),''.

(3) Section 415(c)(3)(D)(ii) of such Code is amended by inserting ''132(m)(4),'' after ''132(f)(4),''.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

TITLE VI—PARITY IN EMPLOYEE BENEFITS

SEC. 601. INCLUSION IN GROSS INCOME OF FUNDED DEFERRED COMPENSATION OF CORPORATE INSIDERS IF CORPORATION FUNDS DEFINED CONTRIBUTION PLAN WITH EMPLOYER STOCK.

(a) IN GENERAL.—Subpart A of part I of subchapter D of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

''SEC. 409A. DENIAL OF DEFERRAL FOR FUNDED DEFERRED COMPENSATION OF CORPORATE INSIDERS IF CORPORATION FUNDS DEFINED CONTRIBUTION PLAN WITH EMPLOYER STOCK.

''(a) IN GENERAL.—If an employer maintains a defined contribution plan to which employer contributions are made in the form of employer stock and such employer maintains a funded deferred compensation plan—

''(1) compensation of any corporate insider which is deferred under such funded deferred compensation plan shall be included in the gross income of the insider or beneficiary for the 1st taxable year in which there is no substantial risk of forfeiture of the rights to such compensation, and

''(2) the tax treatment of any amount made available under the plan to a corporate insider or beneficiary shall be determined under section 72 (relating to annuities, etc.).

''(b) FUNDED DEFERRED COMPENSATION PLAN.—For purposes of this section—

''(1) IN GENERAL.—The term 'funded deferred compensation plan' means any plan providing for the deferral of compensation unless—

''(A) the employee's rights to the compensation deferred under the plan are no greater than the rights of a general creditor of the employer, and

''(B) all amounts set aside (directly or indirectly) for purposes of paying the deferred compensation, and all income attributable to such amounts, remain (until made available to the participant or other beneficiary) solely the property of the employer (without being restricted to the provision of benefits under the plan), and

''(C) the amounts referred to in subparagraph (B) are available to satisfy the claims of the employer's general creditors at all times (not merely after bankruptcy or insolvency).

Such term shall not include a qualified employer plan.

''(2) SPECIAL RULES.—

''(A) EMPLOYEE'S RIGHTS.—A plan shall be treated as failing to meet the requirements of paragraph (1)(A) unless, under the written terms of the plan—

''(i) the compensation deferred under the plan is paid only upon separation from service, death, or at a specified time (or pursuant to a fixed schedule), and

''(ii) the plan does not permit the acceleration of the time such deferred compensation is paid by reason of any event.

If the employer and employee agree to a modification of the plan that accelerates the time for payment of any deferred compensation, then all compensation previously deferred under the plan shall be includible in gross income for the taxable year during which such modification takes effect and the taxpayer shall pay interest at the underpayment rate on the underpayments that would have occurred had the deferred compensation been includible in gross income in the taxable years deferred.

''(B) CREDITOR'S RIGHTS.—A plan shall be treated as failing to meet the requirements of paragraph (1)(B) with respect to amounts set aside in a trust unless—

''(i) the employee has no beneficial interest in the trust,

''(ii) assets in the trust are available to satisfy claims of general creditors at all times (not merely after bankruptcy or insolvency), and

''(iii) there is no factor (such as the location of the trust outside the United States) that would make it more difficult for general creditors to reach the assets in the trust than it would be if the trust assets were held directly by the employer in the United States.

''(c) CORPORATE INSIDER.—For purposes of this section, the term 'corporate insider' means, with respect to a corporation, any individual who is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934 with respect to such corporation.

''(d) OTHER DEFINITIONS.—For purposes of this section—

''(1) PLAN INCLUDES ARRANGEMENTS, ETC.—The term 'plan' includes any agreement or arrangement.

''(2) SUBSTANTIAL RISK OF FORFEITURE.—The rights of a person to compensation are subject to a substantial risk of forfeiture if such person's rights to such compensation are conditioned upon the future performance of substantial services by any individual.''

(b) CLERICAL AMENDMENT.—The table of sections for such subpart A is amended by adding at the end the following new item:

''Sec. 409A. Denial of deferral for funded deferred compensation of corporate insiders if corporation funds defined contribution plan with employer stock.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts deferred after the date of the enactment of this Act.

SEC. 602. PERFORMANCE-BASED COMPENSATION EXCEPTION TO $1,000,000 LIMITATION ON DEDUCTIBLE COMPENSATION NOT TO APPLY IN CERTAIN CASES.

(a) IN GENERAL.—Paragraph (4) of section 162(m) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

''(G) CERTAIN FACTORS NOT PERMITTED TO BE TAKEN INTO ACCOUNT IN DETERMINING WHETHER PERFORMANCE GOALS ARE MET.—Subparagraph (C) shall not apply if, in determining whether the performance goals are met, any of the following are taken into account:

''(i) Cost savings as a result of changes to any qualified employer plan (as defined in section 4972(d)).

''(ii) Excess assets of such a plan or earnings thereon.

''(iii) Any excess of the amount assumed to be the return on the assets of such a plan over the actual return on such assets.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

TITLE VII—PROTECTION OF RETIREMENT EXPECTATIONS

SEC. 701. PROTECTION OF PARTICIPANTS FROM CONVERSIONS TO HYBRID DEFINED BENEFIT PLANS.

(a) AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) ELECTION TO MAINTAIN RATE OF ACCRUAL IN EFFECT BEFORE PLAN AMENDMENT.—Section 204(b)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(b)(1)) is amended by adding at the end the following new subparagraph:

''(I)(i) Notwithstanding the preceding subparagraphs, in the case of a plan amendment to a defined benefit plan—

''(I) which has the effect of converting the plan to a plan under which the accrued benefit is expressed to participants and beneficiaries as an amount other than an annual benefit commencing at normal retirement age (or which has a similar effect as determined under regulations issued under clause (iii)), and

''(II) which has the effect of reducing the rate of future benefit accrual of 1 or more participants,

such plan shall be treated as not satisfying the requirements of this paragraph unless such plan meets the requirements of clause (ii).

''(ii) A plan meets the requirements of this clause if the plan provides each participant who has attained 10 years of service (as determined under section 203) under the plan at the time such amendment takes effect with—

''(I) notice of the plan amendment indicating that it has such effect, including a comparison of the present and projected values of the accrued benefit determined both with and without regard to the plan amendment, and

''(II) an election, on the date of the conversion, to either receive benefits under the terms of the plan as in effect on or after the effective date of such plan amendment or to receive benefits under the terms of the plan as in effect immediately before the effective date of such plan amendment (taking into account all benefit accruals under such terms since such date).

''(iii) The Secretary shall issue regulations under which any plan amendment which has an effect similar to the effect described in clause (i)(I) shall be treated as a plan amendment described in clause (i)(I). Such regulations may provide that if a plan sponsor represents in communications to participants and beneficiaries that a plan amendment has an effect described in the preceding sentence, such plan amendment shall be treated as a plan amendment described in clause (i)(I).''.

(2) EARLY RETIREMENT SUBSIDY TAKEN INTO ACCOUNT FOR PURPOSES OF OPENING BALANCE OF HYBRID DEFINED BENEFIT PLAN.—Section 204(g) of such Act (29 U.S.C. 1054(g)) is amended by adding at the end the following new paragraph:

''(6) In the case of a plan amendment to a defined benefit plan which has the effect of converting the plan to a plan under which the accrued benefit is expressed to participants and beneficiaries as an amount other than an annual benefit commencing at normal retirement age (or a plan amendment to such plan having a similar effect as determined under regulations issued under subsection (b)(1)(I)(iii)), such amendment shall not be treated as reducing accrued benefits merely because under such amendment any early retirement benefit or retirement-type subsidy (within the meaning of paragraph (2)(A)) is taken into account for purposes of the opening balance of the amended plan.''.

(3) INTEREST RATE FOR DETERMINATIONS RELATING TO PLAN CONVERSIONS.—Section 204(g) of such Act (as amended by paragraph (2)) is amended further by adding at the end the following new paragraph:

''(7) INTEREST RATE.—For purposes of this paragraph—

''(A) in the case of an amendment described in paragraph (1) which takes effect on or after the enactment of this paragraph, the interest rate and mortality tables to be used in determining the present value of the accrued benefit under such amendment shall be the applicable rate and tables under section 417(e)(3) of the Internal Revenue Code of 1986 as of the date on which such amendment takes effect, and

''(B) in the case of amendments described in paragraph (1) which took effect before the enactment of this paragraph, the interest rate and mortality tables to be used in determining the present value of the accrued benefit under such amendments shall be the applicable rate and tables which were in effect under section 412(l) of the Internal Revenue Code of 1986 as of the effective date of the respective amendment.''.

(b) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—

(1) ELECTION TO MAINTAIN RATE OF ACCRUAL IN EFFECT BEFORE PLAN AMENDMENT.—Section 411(b)(1) of the Internal Revenue Code of 1986 (relating to accrued benefit requirements for defined benefit plans) is amended by adding at the end the following new subparagraph:

''(I) ELECTION TO MAINTAIN RATE OF ACCRUAL IN EFFECT BEFORE CERTAIN PLAN AMENDMENTS.—

''(i) IN GENERAL.—Notwithstanding the preceding subparagraphs, in the case of a plan amendment to a defined benefit plan—

''(I) which has the effect of converting the plan to a plan under which the accrued benefit is expressed to participants and beneficiaries as an amount other than an annual benefit commencing at normal retirement age (or which has a similar effect as determined under regulations issued under clause (iii)), and

''(II) which has the effect of reducing the rate of future benefit accrual of 1 or more participants,

such plan shall be treated as not satisfying the requirements of this paragraph unless such plan meets the requirements of clause (ii).

''(ii) REQUIREMENTS.—A plan meets the requirements of this clause if the plan provides each participant who has attained 10 years of service (as determined under section 203) under the plan at the time such amendment takes effect with—

''(I) notice of the plan amendment indicating that it has such effect, including a comparison of the present and projected values of the accrued benefit determined both with and without regard to the plan amendment, and

''(II) an election, on the date of the conversion, to either receive benefits under the terms of the plan as in effect on or after the effective date of such plan amendment or to receive benefits under the terms of the plan as in effect immediately before the effective date of such plan amendment (taking into account all benefit accruals under such terms since such date).

''(iii) REGULATIONS.—The Secretary shall issue regulations under which any plan amendment which has an effect similar to the effect described in clause (i)(I) shall be treated as a plan amendment described in clause (i)(I). Such regulations may provide that if a plan sponsor represents in communications to participants and beneficiaries that a plan amendment has an effect described in the preceding sentence, such plan amendment shall be treated as a plan amendment described in clause (i)(I).''.

(2) EARLY RETIREMENT SUBSIDY TAKEN INTO ACCOUNT FOR PURPOSES OF OPENING BALANCE OF HYBRID DEFINED BENEFIT PLAN.—Paragraph (6) of section 411(d) (relating to accrued benefit not to be decreased by amendment) is amended by adding at the end the following new subparagraph:

''(F) EARLY RETIREMENT SUBSIDY TAKEN INTO ACCOUNT FOR PURPOSES OF OPENING BALANCE OF HYBRID DEFINED BENEFIT PLAN.—In the case of a plan amendment to a defined benefit plan which has the effect of converting the plan to a plan under which the accrued benefit is expressed to participants and beneficiaries as an amount other than an annual benefit commencing at normal retirement age (or a plan amendment to such plan having a similar effect as determined under regulations issued under subsection (b)(1)(I)(iii)), such amendment shall not be treated as reducing accrued benefits merely because under such amendment any early retirement benefit or retirement-type subsidy (within the meaning of section subparagraph (B)(i)) is taken into account for purposes of the opening balance of the amended plan.''.

(3) INTEREST RATE FOR DETERMINATIONS RELATING TO PLAN CONVERSIONS.—

Paragraph (6) of section 411(d) of such Code (as amended by paragraph (2)) is amended further by adding at the end the following new subparagraph:

''(G) INTEREST RATE.—For purposes of this paragraph—

''(i) in the case of an amendment described in subparagraph (A) which takes effect on or after the enactment of this subparagraph, the interest rate and mortality tables to be used in determining the present value of the accrued benefit under such amendment shall be the applicable rate and tables under section 417(e)(3) as of the date on which such amendment takes effect, and

''(ii) in the case of amendments described in subparagraph (A) which took effect before the enactment of this subparagraph, the interest rate and mortality tables to be used in determining the present value of the accrued benefit under such amendments shall be the applicable rate and tables which were in effect under section 412(l) as of the effective date of the respective amendment.''.

(b) EFFECTIVE DATE AND RELATED RULES.—

(1) IN GENERAL.—The amendments made by this section shall apply to plan amendments taking effect after the date of the enactment of this Act.

(2) PLAN AMENDMENTS SUBJECT TO LITIGATION.—The amendments made by this section also shall apply to any plan amendment taking effect on or before such date if—

(A) no determination letter is issued on or before such date by the Internal Revenue Service which has the effect of approving the plan amendment, and

(B) such plan amendment is, on April 8, 2003, subject to a court action based on age discrimination.

(3) SPECIAL RULE.—In the case of a plan amendment taking effect before 90 days after the date of the enactment of this Act, the requirements of section 204(b)(1)(I) of the Employee Retirement Income Security Act of 1974 (as added by this section) and section 411(b)(1)(I) of the Internal Revenue Code of 1986 (as added by this section) shall be treated as satisfied in connection with such plan amendment, in the case of any participant described in such sections 204(b)(1)(I) and 411(b)(1)(I) in connection with such plan amendment, if, as of the end of such 90-day period—

(A) the notice described in clause (i)(I) of such section 204(b)(1)(I) and clause (i)(I) of such section 411(b)(1)(I) in connection with such plan amendment has been provided to such participant, and

(B) the plan provides for the election described in clause (i)(II) of such section 204(b)(1)(I) and clause (i)(II) of such section 411(b)(1)(I) in connection with such participant's retirement under the plan.

TITLE VIII—TREATMENT OF CORPORATE INSIDERS

SEC. 801. SPECIAL RULES FOR EXECUTIVE PERKS AND RETIREMENT BENEFITS.

(a) IN GENERAL.—Part I of subchapter D of chapter 1 of the Internal Revenue Code of 1986 (relating to pension, profit-sharing, stock bonus plans, etc.) is amended by adding at the end the following new subpart:

''SUBPART F—SPECIAL RULES FOR EXECUTIVE PERKS AND RETIREMENT BENEFITS

''SEC. 420A. HOLDING PERIOD REQUIREMENT FOR STOCK ACQUIRED THROUGH EXERCISE OF OPTION.

''(a) IN GENERAL.—In the case of a corporate insider with respect to a corporation, the tax imposed by this chapter on a corporate insider for any taxable year shall be increased by 50 percent of the amount realized by such insider from the disqualified disposition during such year of stock acquired by the corporate insider upon the exercise of a stock option granted by the corporation with respect to which such individual is a corporate insider.

''(b) DISQUALIFIED DISPOSITION OF STOCK.—

''(1) IN GENERAL.—For purposes of subsection (a), the term 'disqualified disposition of stock' means any sale, exchange, or other disposition of stock which, if such stock were employer securities held in a qualified cash or deferred arrangement (as defined in section 401(k)(2)), would violate any restriction imposed on the sale or other disposition of such securities by the plan of which such arrangement is a part.

''(2) SPECIAL RULE FOR 2 OR MORE CASH OR DEFERRED ARRANGEMENTS.—If a corporation has more than 1 qualified cash or deferred arrangement (as so defined), the restrictions which apply for purposes of paragraph (1) shall be the most restrictive provisions relating to the disposition of employer securities held pursuant to any such arrangements.

''SEC. 420B. ADDITIONAL TAX ON NONDISCLOSED RETIREMENT PERKS.

''(a) IN GENERAL.—In the case of a publicly traded corporation, the tax imposed by this chapter for the taxable year shall be increased by 50 percent of the net cost to the corporation for the taxable year of personal perks provided to a retired executive of the corporation.

''(b) WAIVER IF PERKS PROVIDED PURSUANT TO SHAREHOLDER APPROVAL.—Subsection (a) shall not apply with respect to any personal perks provided pursuant to a contract if—

''(1) all of the material terms of such contract (including a description of the benefits to be provided to the executive and the extent of such benefits) are disclosed to shareholders, and

''(2) such contract is approved by a majority of the vote in a separate shareholder vote before any benefits are provided under the contract.

''(c) NET COST OF PERSONAL PERKS.—

''(1) IN GENERAL.—For purposes of subsection (a), the net cost of personal perks provided to a retired executive is the excess of—

''(A) the cost to the corporation of such perks, over

''(B) the amount paid in cash during the taxable year by the executive to reimburse the corporation for the cost of such perks.

''(2) PERSONAL PERKS.—For purposes of paragraph (1), the term 'personal perks' means—

''(A) the use of corporate-owned property,

''(B) travel expenses, including meals and lodging, unless such expenses are directly related to the performance of services by the executive for the corporation and the business relationship of such expenses is substantiated under the requirements of section 274,

''(C) tickets to sporting or other entertainment events,

''(D) amounts paid or incurred for membership in any club organized for business, pleasure, recreation, or other social purpose, and

''(E) other personal services, including services related to maintenance or protection of any personal residence of the executive.

''(3) COST RELATING TO USE OF CORPORATE-OWNED PROPERTY.—For purposes of this subsection—

''(A) IN GENERAL.—The cost taken into account with respect to the use of corporate-owned property shall be the allocable portion of the total cost of operating such property.

''(B) ALLOCABLE PORTION.—For purposes of subparagraph (A), the allocable portion of total cost is—

''(i) the portion of the total cost (including depreciation) incurred by the corporation for operating and maintaining such property during the corporation's taxable year in which such use occurred,

''(ii) which is allocable to the use (determined on the basis of the relationship of such use to the total use of the property during the taxable year).

''SEC. 420C. DEFINITIONS AND SPECIAL RULE.

''(a) DEFINITIONS.—For purposes of this subpart—

''(1) CORPORATE INSIDER.—The term 'corporate insider' means, with respect to a corporation, any individual—

''(A) who is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934 with respect to such corporation, or

''(B) who would be subject to such requirements if such corporation were an issuer of equity securities referred to in such section.

''(2) RETIRED EXECUTIVE.—The term 'retired executive' means any corporate insider who is no longer performing services on a substantially full time basis in the capacity that resulted in being subject to the requirements of section 16(a) of the Securities Exchange Act of 1934.

''(3) PUBLICLY TRADED CORPORATION.—The term 'publicly traded corporation' means any corporation issuing any class of securities required to be registered under section 12 of the Securities Exchange Act of 1934.

''(4) CORPORATE-OWNED PROPERTY.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'corporate-owned property' means any of the following property owned by a corporation—

''(i) planes,

''(ii) apartments or other residences,

''(iii) vacation, sports, and entertainment facilities, and

''(iv) cars.

Such term includes any such property which is leased or chartered by the corporation.

''(B) EXCEPTIONS.—Such term does not include any property used directly by the corporation in providing transportation, lodging, or entertainment services to the general public.

''(b) ADDITIONS TO TAX NOT TREATED AS TAX FOR CERTAIN PURPOSES.—The tax imposed by sections 420A and 420B shall not be treated as a tax imposed by this chapter for purposes of determining—

''(1) the amount of any credit allowable under this chapter, or

''(2) the amount of the minimum tax imposed by section 55.''.

(b) CLERICAL AMENDMENT.—The table of subparts for part I of subchapter D of chapter 1 of such Code is amended by adding at the end the following new item:

''Subpart F. Special Rules for Executive Perks and Retirement Benefits.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as follows:

(1) Section 420A of the Internal Revenue Code of 1986 (as added by this section) shall apply to stock acquired pursuant to the exercise of an option after the date of the enactment of this Act.

(2)(A) Except as provided by subparagraph (B), section 420B of such Code (as so added) shall apply to perks provided after the date of the enactment of this Act.

(B) In the case of perks provided pursuant to a contract in existence on the date of the enactment of this Act, such section 420B shall apply to such perks after the date of the first annual shareholders meeting after the date of the enactment of this Act.

SEC. 802. GOLDEN PARACHUTE EXCISE TAX TO APPLY TO DEFERRED COMPENSATION PAID BY CORPORATION AFTER MAJOR DECLINE IN STOCK VALUE OR CORPORATION DECLARES BANKRUPTCY.

(a) IN GENERAL.—Section 4999 of the Internal Revenue Code of 1986 (relating to golden parachute payments) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

''(c) TAX TO APPLY TO DEFERRED COMPENSATION PAID AFTER MAJOR STOCK VALUE DECLINE OR BANKRUPTCY.—

''(1) IN GENERAL.—For purposes of this section, the term 'excess parachute payment' includes severance pay, and any other payment of deferred compensation, which is received by a corporate insider after the date that the insider ceases to be employed by the corporation if—

''(A) there is at least a 75-percent decline in the value of the stock in such corporation during the 1-year period ending on such date, or

''(B) such corporation becomes a debtor in a title 11 or similar case (as defined in section 368(a)(3)(A)) during the 180-day period beginning 90 days before such date.

Such term shall not include any payment from a qualified employer plan.

''(2) CORPORATE INSIDER.—For purposes of paragraph (1), the term 'corporate insider' means, with respect to a corporation, any individual who is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934 with respect to such corporation.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to cessations of employment after the date of the enactment of this Act.

SEC. 803. ADEQUATE DISCLOSURE REGARDING EXECUTIVE COMPENSATION PACKAGES.

(a) IN GENERAL.—Section 402 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1102) is amended by inserting after subsection (c) the following new subsection:

''(d) DISCLOSURE REGARDING EXECUTIVE COMPENSATION PACKAGES.—

''(1) IN GENERAL.—In any case in which an employer takes any action to establish or substantially improve an executive compensation package with respect to any employee, such action may not take effect unless the employer has met the requirements of paragraph (2).

''(2) REQUIREMENTS.—An employer meets the requirements of this paragraph if—

''(A) not less than 100 days prior to the effective date of the action described in paragraph (1), the employer provides written notification of the action to—

''(i) each employee of the employer,

''(ii) each employee organization representing employees of the employer (if any), and

''(iii) in the case of an employer that is a corporation, the board of directors, and

''(B) in the case of an employer that is a corporation, the board of directors has approved such action.

Any such written notification shall be written in language calculated to be understood by the average plan participant.

''(3) DEFINITIONS.—For purposes of this subsection—

''(A) EXECUTIVE COMPENSATION PACKAGE.—The term 'executive compensation package' means a combination of pay, benefits under employee benefit plans, and other forms of compensation provided by an employer primarily for employees who are members of a select group of management or highly compensated employees.

''(B) SUBSTANTIAL IMPROVEMENT.—An executive compensation package is 'substantially improved' if the present value of such package is increased by not less than 10 percent.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to actions taken after the date of the enactment of this Act.

TITLE IX—MISCELLANEOUS PROVISIONS

SEC. 901. CORPORATE DEDUCTION FOR REINVESTED ESOP DIVIDENDS SUBJECT TO DEDUCTIBLE LIMITS.

(a) IN GENERAL.—Subsection (a) of section 404 of the Internal Revenue Code of 1986 (relating to general rule) is amended by adding at the end the following new paragraph:

''(13) CERTAIN DIVIDENDS REINVESTED IN EMPLOYEE STOCK OWNERSHIP PLANS SUBJECT TO DEDUCTIBLE LIMITS.—For purposes of this subsection, an applicable dividend described in subsection (k)(2)(A)(iii)(I) shall be treated as compensation.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 902. CREDIT FOR ELECTIVE DEFERRALS AND IRA CONTRIBUTIONS BY CERTAIN INDIVIDUALS MADE PERMANENT (SAVER'S TAX CREDIT).

Section 25B of the Internal Revenue Code of 1986 is amended by striking subsection (h) (relating to termination).

SEC. 903. AUTHORITY TO RESCIND TRANSFERS TO PLANS MADE FOR THE BENEFIT OF HIGHLY COMPENSATED EMPLOYEES.

Section 403 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1103) is amended by adding at the end the following new subsection:

''(e) The plan administrator or any person acting as the plan administrator may avoid a transfer of an interest in property to any trust or similar arrangement for the benefit of any insider or other management employee to fund supplemental retirement benefits or other deferred compensation.''.

TITLE X—GENERAL PROVISIONS

SEC. 1001. GENERAL EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided in this Act, the amendments made by this Act shall apply with respect to plan years beginning on or after January 1, 2004.

(b) SPECIAL RULE FOR COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of

this Act, subsection (a) shall be applied to benefits pursuant to, and individuals covered by, any such agreement by substituting for ''January 1, 2004'' the date of the commencement of the first plan year beginning on or after the earlier of—

(1) the later of—

(A) January 1, 2005, or

(B) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after the date of the enactment of this Act), or

(2) January 1, 2006.

SEC. 1002. PLAN AMENDMENTS.

If any amendment made by this Act requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after the effective date specified in section 601, if—

(1) during the period after such amendment made by this Act takes effect and before such first plan year, the plan is operated in accordance with the requirements of such amendment made by this Act, and

(2) such plan amendment applies retroactively to the period after such amendment made by this Act takes effect and before such first plan year.

The SPEAKER pro tempore. Pursuant to House Resolution 230, the gentleman from New Jersey (Mr. ANDREWS) and the gentleman from Ohio (Mr. BOEHNER) each will control 30 minutes.

The Chair recognizes the gentleman from New Jersey (Mr. ANDREWS).

Mr. ANDREWS. Mr. Speaker, I yield myself 2 minutes.

I would urge our colleagues to support this well-reasoned and well-thought-out Democratic substitute. It differs in many ways, and it is an improvement in many ways from the underlying bill. I would like to highlight a few of those improvements, first in the area of investment advice.

This substitute does provide for investment advice for workers and pensioners, but it clearly favors independent investment advice. It provides that workers and pensioners will receive advice from qualified individuals who do not have an interest in the outcome of the advice that they are giving.

Second, this substitute, unlike the underlying bill, deals with the problem of cash balance plans. Cash balance plans, which I believe have been improperly used in many cases, have become a nightmare for pensioners, where people who thought that they had a guaranteed income at a set level for the rest of their lives have confronted the nightmare scenario where they, in fact, have much less, sometimes as much as 50 percent less than they thought they had in their pensions.

This substitute contains a very simple provision that empowers each employee to choose between conversion of his or her pension to a cash balance plan or retention of his or her pension in its more traditional form. This bill puts a stop to the secret transactions involving executive pension compensation and pension provisions. This substitute also requires that in collective bargaining negotiations, that companies be candid and comprehensive in their disclosures to bargaining units with whom they are negotiating.

Very recently in the problems regarding American Airlines, we saw the situation where unions received significant misrepresentations as to the financial provisions of their employers and agreed to massive cutbacks in their compensation packages based upon those misrepresentations. This substitute would outlaw such a provision.

In summary, the substitute addresses the underlying problems and causes of the Enron scandal. I would urge its adoption.

Mr. Speaker, I reserve the balance of my time.

Mr. BOEHNER. Mr. Speaker, I yield 10 minutes to the gentleman from Texas (Mr. SAM JOHNSON) and ask unanimous consent that he be permitted to control that time.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. BOEHNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today we have before us a pension security bill that passed the House last year with broad bipartisan support. That is the underlying bill, with two exceptions, two issues that were contained in last year's Sarbanes-Oxley bill, the 30-day notice of a blackout period and the prohibition on company insiders selling stock during a blackout period. Those issues have been signed into law. But the balance of that bill is what we have before us today. It is a reasonable and responsible approach to address the problems that were identified during our investigation of Enron, WorldCom and others. More specifically and more importantly, it does not overreach and begin to delve into areas where there are likely to be very serious unintended consequences.

The substitute that is being offered by my friends on the other side is well-meaning, well-intentioned, and we have worked closely on these issues for many years, but the fact is that if Members look at the substitute that we have before us, it will cause serious concern in the employer community, and I would suggest many employees across the country will no longer have pensions because of the onerous regulations and excessive litigation that would result if the substitute that is offered were, in fact, adopted and signed into law.

Specifically, it does, in fact, increase liability for employers under ERISA, new rights to sue, additional penalties that I think are unnecessary. The current protections within ERISA provide a solid framework for addressing grievances from employees.

Secondly, it would require every plan fiduciary to have insurance to meet whatever the size of the pension plan is. It would be expensive, costly, and would create a situation where no one will want to serve as the fiduciary; and if, in fact, they can find someone, the cost of providing the insurance will drive up the cost of providing pensions.

We have worked for years in this body to try to make it easier for businesses to set up pensions. We have tried to encourage businesses to cover more employees with pensions. The last thing we want to do is to dump cold water on this movement by again increasing cost and increasing regulation. We could talk about the regulatory bombardment in here when it comes to company insiders selling stock, regardless of what the reason is. Under this bill they would have to report it within 1 day. Employees would be getting these notices on an ongoing basis, and to what purpose? I do not know.

But, more importantly, the substitute tries to regulate corporate salaries and corporate governance issues, but through the pension system. The Congress passed the Sarbanes-Oxley bill last year that dealt with large corporate governance issues. Most all Members of this body on both sides of the aisle supported it. It was a very good bill. One could argue it might be overreaching in some areas, but by and large addressing the serious issues that were uncovered during Enron and WorldCom. I do not think that we need to readdress corporate governance issues and executive pay issues in a pension bill.

But most importantly, the substitute that we have before us guts the serious investment advice language that we have in the underlying bill. We have heard a lot today about the need for investment advice for the 61, 62 million Americans who have self-directed accounts who have been so protected by this law passed in 1974 that their ability to get investment advice is almost nil. As I have said before, the only place they can really get investment advice is from Bob at the coffee shop. What we seek to do in the underlying bill is to provide a framework and safeguards for them to get investment advice from the real experts in the industry. If they do not want to take employer-provided investment advice, the Committee on Ways and Means as part of this bill provides a tax deduction, an above-the-line tax deduction for them to go out and get their own investment advice. But I think all of us agree that having real investment advice in the marketplace for those with self-directed accounts has to happen, and the sooner it happens, the better.

But under the bill that we have before us, it says you can only get third-party independent investment advice. There is no reason to even have it in the bill because that is what you can get today. And you do not get real investment advice because, one, employees do not want to have to pay for it; and, secondly, the so-called independent advice that is out there today is generic, very generic, whatever your

age is, whatever your income is, whatever the assets in your plan are.

I would suggest to my colleagues that if we are serious about having real investment advice in the marketplace today for America's employees, that this will not get there. I would ask my colleagues and urge them to look at the substitute and vote against it.

Mr. Speaker, I reserve the balance of my time.

Mr. ANDREWS. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from California (Mr. GEORGE MILLER), the author of the substitute.

(Mr. GEORGE MILLER of California asked and was given permission to revise and extend his remarks.)

Mr. GEORGE MILLER of California. Mr. Speaker, the Democratic substitute that we offer today is based on a very simple principle. It is a principle that we all grew up with. It was a principle that was articulated by the President of the United States just days after the Enron catastrophe when America saw that so many people who worked for Enron were trapped in a system during the meltdown of that company, during the corruption in that company, during the unlawfulness in that company, that they were trapped in that system and unable to protect their retirement while corporate executives in the penthouse suites were unloading stock, getting golden parachutes, getting secured pension plans, getting insured pension plans, having pension plans put into trusts. They took good care of themselves even though they took the company over the edge. But down below, just like in the Titanic, just like in the Lusitania, the poor people were trapped as the ship was going down. They were trapped because of a class system.

That very simple principle that has been articulated by the President was that if it is okay for the sailor, it ought to be okay for the captain. What the President was saying there was those protections that are in place for the executives should have been in place for the employees, that employees' pensions ought to be treated as executive pensions are treated.

We grew up with this. Our parents told us when you got into a fight with our brothers and sisters and maybe it did not go our way, they said, ''What's good for the goose is good for the gander.'' What is good for the captain is good for the sailor. We have said it to our spouse, we have said it to our children, we have said it to our partners in business, we have said it to our staff. It is about fairness.

What the Democratic alternative recognizes is the basic dignity of the American worker and the right of that worker to control the pension plan, which is their money. This is money that was given to them for the work that they gave to the corporation. It was figured out by the corporation, how much they would pay them an hour, how much they would give them in health care, how much they would give them in pension benefits, and they went to work for them. When they gave it to them each month, it is theirs. But now they do not want to have them have any control over it. They do not want them to have the same protections as the corporate elite. They do not want them to have the same rights as those individuals. Why?

Enron was not just built on the back of Ken Lay. Big parts of that company were built on the utility workers in the Pacific Northwest, the pipeline workers in the Southwest, the power plant workers in California and everybody in between. Why were they not entitled to these protections? Why were they not entitled to these rights?

But the Republican bill today, as the Republican bill last year, keeps in place that class system, that the corporate elites will get taken care of, these great captains of capitalists, these crusaders of the free enterprise system, the people who come to Congress and talk about risk, that they take risk. What we now see is the CEO of Delta Airlines, we see the CEO of American Airlines, we see the CEOs of so many companies and the board of directors, they do not want any risk, they want their compensation guaranteed, they want their golden parachute guaranteed, and they want their pension plan guaranteed. Even if they drive the company into the ground, even if they take it into bankruptcy, they will be protected.

That is what has so incensed the American public, and the pilots, and the flight attendants, and the machinists, and the workers at American Airlines that they were willing to risk their whole future to say, that is unfair. And America recognized it like that, Wall Street recognized it like that, and the chairman of American Airlines resigned, admitting that he had made a tragic mistake in being so selfish on behalf of the board of directors and himself at a time he was asking workers to give back billions of dollars.

So what do we say? We say that workers are entitled to advice about the selling and the coming and going in the corporate suites when they are selling their stock because they do not think the corporation is doing so well; we are entitled to know that on those inside sales. We say that workers are entitled, if they have their pensions guaranteed, that the crew, the workers, will have their pensions guaranteed just like the people in the corporate suites. We are saying for those workers, that they should be represented on the boards of the retirement plan so that they will have the information, because as we saw in Enron, the executive representative on the retirement plan, the captain, so to speak, never told the crew that she was selling her stock because she had investment advice to get out of the company. Those people lost their fortune. She walked away with hundreds and hundreds of thousands of dollars because she did not tell them.

We are simply saying, you must tell them, that you must be on the board so you have a chance. That is what this bill does. It is about the equity for the worker, it is about the dignity of the worker, and it is about the rights of the worker to be protected.

They say this will cause trouble in corporations, this will cause concern. A little democracy? A little democracy in the corporation? A little recognition that the corporate body is more than just the CEOs and the executives, that it is also the workers? That causes concern?

Ladies and gentlemen, that is what we are talking about spreading to the rest of the world, the free enterprise system. We are talking about spreading the democratic system. But somehow when it comes to carving up billions of dollars, we cannot have too much democracy in the workplace.

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It is simply unfair to the workers. This bill also closes a loophole of having conflicted advice that the Republican bill opens for the first time, and this bill responds to the concerns of the Attorney General of New York, who just settled a case for $1.4 billion, when he said that this bill would open up a huge loophole, a huge loophole for conflicted advice, and put at risk the pensions of these individuals, that this bill goes too far. That conflicted advice, Jane Bryant Quinn, the financial columnist in Newsweek magazine, says they might as well give their money to an Olympic ice-skating judge as give it to this conflicted advice. These are the very same people who just agreed to pay a $1.4 billion fine for their activity. They did not admit that they did anything wrong, but they put up $1.4 billion. We have got to understand that we cannot turn the pension assets, the retirement assets of those workers over to those individuals. The workers in this country and their families and their future and their children and their retirement plans deserve better. They deserve the Democratic substitute.

Mr. BOEHNER. Mr. Speaker, I yield 3 minutes to the gentleman from Sacramento, California (Mr. OSE).

(Mr. OSE asked and was given permission to revise and extend his remarks.)

Mr. OSE. Mr. Speaker, I rise today to support the legislation that the gentleman from Ohio (Mr. BOEHNER) has brought forward, and I thank him for yielding me this time to come to the floor and speak to it.

I am opposed to the substitute. I did want to come down and talk about one issue here in particular, and that is this issue of highly compensated individuals within corporate America and the treatment that their retirement plans and retirement planning get versus the run-of-the-mill pension plans that the everyday worker gets.

We have asked, and unfortunately the Committee on Rules ruled out of order, to place an amendment in that would have directed the Department of Labor to do a study as to the broad variety of plans that are available to highly compensated individuals and the manner in which they are funded and then compare that with the manner in which the pension plans for ordinary Americans who might work in corporate America might be receiving. And the reason we asked for that is that there is significant anecdotal evidence that while retirement plans in corporate America for the run-of-the-mill worker are in many cases underfunded, this cafeteria of plans for highly compensated individuals may well be getting fully funded using corporate assets.

As I said, I did propose an amendment that was unfortunately ruled out of order by the Committee on Rules to this, and I will be introducing a bill entitled The Employees' Pension Equity Act of 2003 to address this situation. I think we are all concerned here on the floor of the House that Americans be treated equitably. This particular proposal that I will be putting forward will do that.

We do need to look at the manner in which highly compensated individuals as defined under ERISA, how they take care of their pension planning as compared with the regular American retirement programs that the corporation provides under the pension plans that occur. We need to make sure that both groups are treated equitably. We need to make sure that if the regular American, the regular Joe and the regular Jane, if their pension plans are funded to a 60 percent level, then the highly compensated individuals cannot take corporate assets and fund their retirement programs at a 100 percent level and the like. We are looking for equity here. We are looking for some means of leveling the playing field so that the corporate assets cannot be used disproportionately to benefit employees of corporate America.

In my travels around my district, I hear about this regularly. It sticks in people's craw that the occasion arises where highly compensated individuals get to take corporate assets and use them to secure their retirements using any one of the vehicles identified under the ERISA plan act for their purpose and regular Joes cannot do the same thing.

Mr. Speaker, I rise today to support this legislation, which will provide greater security for the pensions of American workers, and to oppose the substitute. In this time of economic instability in the world, it is essential that our hard-working constituents know that their financial future is safe.

Today's bill is focused on securing employee pensions. This is a truly noble cause.

However, many Americans are skeptical about the security of their pension funds. They are also concerned with reports that the managers, whose actions may have damaged the stability of their retirement, walk away with a ''golden parachute'' package of guaranteed money. In short, American workers want to make sure that they are treated fairly and that their funds are equally capable of meeting liabilities as the pension plans of the highly compensated individuals who run their companies.

I recently began investigating just how often employees are left holding the bag while senior executives are fully compensated. I was surprised to learn how little data there is on this topic.

There have been numerous reports on the instability of employee pensions and other retirement plans in recent years. Such reports helped spur the legislation currently before us. There has also been research into the variety of compensation vehicles for corporate executives. However, little of the research compares the two systems or examines why one side may face a shortfall while other employees in the same company are assured of their compensation.

Last night, I proposed an amendment to this bill which the rules, unfortunately, does not allow us to consider. It was quite simple: it called for the Secretary of Labor to conduct a study on the funding and under-funding of pension plans and similar arrangements for both employee plans and the plans of highly compensated individuals.

Most American workers simply want to be treated fairly. When they succeed, they are pleased that their coworkers also benefit. When they fall short, they recognize that everyone gave their best. But, what really sticks in their ''craw'' is when they lose out and the people in charge don't care because they are paid either way. We need to look carefully at situations where employees and executives face different results in the same situation. This report would help us better understand such occurrences.

It is for this reason that I recently introduced ''The Employees' Pension Equity Act of 2003,'' a bill that will prevent executives from walking away with ''golden parachutes'' while employees are left holding the bag.

How does it happen that the ''highly compensated individuals,'' an actual legal term, do not suffer when their decisions leave a business floundering while the foot-soldiers of the business are left unemployed and facing financial hardships?

My legislation seeks to right that wrong.

The Employees' Pension Equity Act requires that the employee funds be just as sound as executive funds. Employees need to know that their pensions will not be left to ''wither on the vine'' while executives walk away with big, guaranteed checks in their pockets.

This legislation is another straightforward bill that requires an annual comparison of employees' and executives' plans, and an annual additional contribution to the employees' fund when they are not in the same fiscal shape as their executives' counterparts.

Mr. Speaker, H.R. 1000 is a good bill that will help protect our constituents. I am pleased to support this legislation and hope the House will take the next step in passing my Employees' Pension Equity Act in the near future.

Mr. ANDREWS. Mr. Speaker, I yield 3 minutes to the gentleman from Vermont (Mr. SANDERS), who is the author of a key provision of the substitute regarding the prevention of the abuse of cash balance plans.

(Mr. SANDERS asked and was given permission to revise and extend his remarks.)

Mr. SANDERS. Mr. Speaker, I thank the gentleman for yielding me this time.

I rise in strong support of the George Miller-Rangel substitute, and this substitute includes legislation that I introduced last month that now has 133 co-sponsors and has been endorsed by the 35 million members of the AARP and the 13 million workers in the AFL-CIO. And this legislation is a very simple piece of legislation included in this amendment, and it says that when a company converts to a cash balance plan after promising its workers a certain pension benefit that one cannot simply, like that, cut somebody's pension by up to 50 percent.

They cannot renege on the promise that they made to that worker and one of the reasons why that worker worked at that company for 10, 20 or 30 years. I ran into this experience in Vermont when hundreds of IBM workers called me up and they said that the promise that the company had made to them was rescinded and the pensions that they had been promised were now out the window. In Vermont, the IBM workers fought back, and they fought back all over the country; and as a result, IBM partially withdrew what they did, and they ended up protecting the older workers and Kodak protected older workers and Motorola protected older workers. But the reality is that millions of American workers today are at risk in seeing huge reductions in the pensions that they were expecting.

Pension anxiety is running rampant all over this country, and if we do not pass this amendment, workers will have good reason to worry that the pensions promised to them will not be there. What this amendment says is very simple. It says that if one is 40 years of age or if one has been with a company for 10 years and is on a defined benefit plan and the company goes to cash balance, they have got to give them a choice. What is wrong with giving workers a choice and not taking away the benefits that they had worked their whole lives for? I would like my Republican friends to tell me that. Some of the good companies have given workers a choice. We should give workers a choice right here. That is the amendment that I have included in this bill.

But there is another issue that was not included. The Members of the United States Congress have a defined benefit pension plan. And the amendment that I offered said if they think cash balance is such a good idea, why do we not adopt it in the Congress? If they want to tell millions of American workers to see a substantial reduction in their pensions, why do we not do the same thing? If it is good for the workers of America, surely it must be good for the Members of the Congress. I offered that amendment. Everyone will be shocked to know the Republican leadership denied it.

Mr. ANDREWS. Mr. Speaker, may I inquire how much time we have left on our side.

The SPEAKER pro tempore (Mr. LINDER). The gentleman from New Jersey (Mr. ANDREWS) has 17 minutes remaining. The gentleman from Ohio (Mr. BOEHNER) has 11½ minutes remaining, and the gentleman from Texas (Mr. SAM JOHNSON) has 10 minutes remaining.

Mr. SAM JOHNSON of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we just heard about IBM and some of the other large companies. But guess what? They fixed the problem; so there is no longer a problem. Why are we talking about it? Because all of this stuff is voluntary anyway.

The Democrat substitute proposes to limit the types of defined benefit plans that companies can offer. Specifically, the substitute limits companies in converting to cash balance plans even though there is substantial evidence that 80 percent of workers fare better under a cash balance plan. The Democrats are attempting to force companies to stay with an outdated, arcane pension system that does not really work in today's market.

We need to allow companies the freedom to provide the best possible benefits to their employees with advice.

Mr. Speaker, I reserve the balance of my time.

Mr. ANDREWS. Mr. Speaker, I yield 30 seconds to the gentleman from Vermont (Mr. SANDERS).

Mr. SANDERS. Mr. Speaker, my friend said that we do not have to do anything. My friend said that it should be voluntary. What happened at IBM is that thousands of workers stood up and fought back. Unfortunately, hundreds of thousands, if not millions, of other workers did not even know what was happening to them. They could not fight back. If the gentleman thinks that giving people a choice is a bad idea, why do the 35 million members of AARP think it is a good idea and the 13 million members of the AFL-CIO? Choice is right.

Mr. SAM JOHNSON of Texas. Mr. Speaker, I reserve the balance of my time.

Mr. ANDREWS. Mr. Speaker, I yield 2 minutes to the gentlewoman from California (Ms. SOLIS), who speaks with passion and conviction for people struggling to get ahead around our country.

(Ms. SOLIS asked and was given permission to revise and extend her remarks.)

Ms. SOLIS. Mr. Speaker, I also rise today in opposition. Almost a year ago I recall as a member of the Committee on Education and the Workforce voting against this similar proposal that is now before us. H.R. 1000 is really an act; and when I say that, it is an act by the Members on the other side of the aisle to give the impression that this piece of legislation will protect working men and women's pensions, and it will not do that, in my opinion. It puts their pensions at risk by allowing self-interested accounting firms to advise employees. That sounds to me like the fox guarding the hen house. This does not work; and if we did not learn from Enron, then we do have some serious problems in this House.

This bill allows high-living executives to continue to skirt pension rules, have their pensions, and ride off into the sunset, while their companies fall into bankruptcy and lay off workers every single day. And I see it happening in my district in Los Angeles County. For the millions of people who have worked hard to put aside money so that one day that little token of security would be there for them is long gone, and it is really unfortunate because I would like to tell the Members that in my own district where many union members thought that they had their pensions protected have now found themselves bankrupt as well, and they are having to borrow from their own family members. This is the wrong thing to do.

In my district people have lost their jobs. Unemployment is above 9 percent; and we are not even talking about that. We are not even talking about those people that are really hurting. President Bush seems to have closed his ears to the concerns and the voice of America, working America. I urge my colleagues to support the George Miller-Rangel substitute, and I thank the gentleman from California (Mr. GEORGE MILLER) for offering this true Pension Security and Fairness Act because it provides fairness and equity for all workers. I oppose H.R. 1000 and support the Miller substitute.

Mr. BOEHNER. Mr. Speaker, I yield 2 minutes to the gentleman from Nebraska (Mr. OSBORNE).

Mr. OSBORNE. Mr. Speaker, I come from a family that has been in a small business operation for the last 100 years, and the biggest concern that I hear in small businesses is government regulation; and I agree with many of the gentleman's proposals here. Some are good, but it does add complexity. It adds cost. And right now what we are seeing is a huge exodus from the retirement plan operations of so many companies. I am afraid that this would exacerbate the problem.

For example, expanding the remedies of ERISA will quite likely lead to more litigation and more expense. Requiring 401(k) insurance is already provided by many plans but adds cost. Making it mandatory will cause people to exit the system. Reporting of insider sales is already governed by the Securities and Exchange Commission; so we think this is somewhat redundant.

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1500 I am as embarrassed as the author of this substitute with some of the compensation plans that we have seen by various executives, and I agree this needs to be addressed. However, when we are dealing with something that has to do with pension reform, I do not believe that this is the appropriate vehicle to use at this time.

So overall what I am saying is I believe the base bill provides sound pension reform without promoting so much complexity and expense that we would eliminate retirement plans. If we do so, we simply throw out the baby with the bath water; and I think as a result, we cause more problems than we solve.

So, Mr. Speaker, I urge passage of this base bill and rejection of the substitute.

Mr. ANDREWS. Mr. Speaker, I yield 2 minutes to the gentleman from Oregon (Mr. BLUMENAUER).

Mr. BLUMENAUER. Mr. Speaker, I listened to the comments about some increased complexity and efforts that may be required. I find it ironic that as we look at some of the complexity we have now for the protection of those who need it the least, we do not get too upset about it; but when we are talking about ordinary working men and women, a little bit of complexity, a little bit of regulation I think is not only in order, but I represent thousands of people in my community who would welcome it today.

Enron purchased a locally owned electric utility in my community called Portland General Electric, a straightforward organization that had been working providing service in our community for generations.

In a few short years, because of the manipulation, the lack of complexity, the lack of oversight, these people had their lives turned upside down. Men and women who had been investing for years took the representations of what you can only regard as corporate bandits at face value and ended up losing hundreds of thousands of dollars, pushing back their retirement for years.

We found the manipulation of Texas-based Enron wash through the West. It has raised utility rates dramatically in our community, putting people out of work and some companies out of business.

I welcome the Miller substitute that would make sure that everybody plays by the same rules; that everybody has perhaps a little bit of complexity, but a whole lot of security. It will protect older employees with a choice on pension conversion, and it will provide more freedom and better information about how their money is managed.

Mr. Speaker, if this had been in place 5 years ago, there would be thousands of Oregonians that could retire today in dignity, not having their lives turned upside down.

I urge support of the Miller substitute.

The SPEAKER pro tempore. The Chair would inform the managers that the gentleman from New Jersey (Mr. ANDREWS) has 12½ minutes remaining, the gentleman from Ohio (Mr. BOEHNER) has 9½ minutes remaining, and the gentleman from Texas (Mr. SAM JOHNSON) has 9 minutes remaining.

Mr. ANDREWS. Mr. Speaker, I yield such time as he may consume to the

gentleman from California (Mr. GEORGE MILLER), the author of the substitute.

Mr. GEORGE MILLER of California. Mr. Speaker, the suggestion again has been made on the other side of the aisle that somehow this would be a burden or somehow this would be complex if we required that workers be treated the same as executives.

They do very complex things in the corporate suites. They create various accounts to pay for the pension benefit of executives. They go out and buy various insurance schemes to pay for the benefit of executives. They create special tax treatment. They come to Congress and get special tax treatment for the pension plans of executives. All very complex. But at the end of the day, it means that that executive will know, no matter what happens to that company, that they and their family and their children will be protected forever into the future because it will be outside of the bankruptcy, it will be outside of the corporate failure.

So complexity is not a problem when the executives want to protect their income. They have been doing it for years. But somehow now to say that we ought to send notice, send an e-mail to your employees and tell them that the president is selling 100,000 shares, that the President is doing an inside deal on a stock option, send an e-mail, you send them all day long, there is nothing complex about it, you type it out and push send; it is not complex. But they do not want the employees to know this. That is why so many people have been trapped in the financial collapse of these companies.

In the middle of the negotiations with the flight attendants, the pilots, the machinists, the ramp workers, when American Airlines was asking those people for $2.3 billion in givebacks from their vacation time, from their pay, from their health benefits, give it back to help the company fly, they were secretly, quietly and in a very complex fashion protecting and guaranteeing hundreds of millions of dollars in compensation for the executives; and they got caught. Once the light was shined on them, they scrambled like rats for the door, because they knew they could not sustain it; and the CEO resigned and they had to give back the compensation package, and then the flight attendants and others agreed to try to help the company stay out of bankruptcy.

That is all this bill does. It says that you ought to know about that when they are negotiating your union contract, what they are doing for the executives. That is why the pension story today is no longer a back-page story. That is why it is on the cover of Fortune Magazine, not exactly a left-wing journal. But Fortune Magazine captured the context when it said oink, the pigs in the suits are jeopardizing your corporation, your compensation and your pension plans. Oink.

Earlier, Fortune Magazine asked America, is your retirement at risk, and why? Because of what is going on in terms of corporate financial gimmickry. It is why millions and millions of Americans have left the stock market and why the stock market laments that they have not returned. They do not have confidence in this system. They do not have confidence in this system any longer. They understand it is rigged on Wall Street against them and it is rigged in the Congress of the United States against them.

Where do these families go to get justice? Where do these families go to get equity? Where do these families go to get fairness, if they cannot come to the Congress of the United States?

So now what we say in the Republican bill is we are going to give them additional advice about what to do with their savings, and we are going to give that advice from the very same people that just had an out-of-court settlement of $1.4 billion because they lied to their clients. They had financial arrangements that prevented them from being independent. They had financial arrangements, so they misrepresented how a stock was doing, how a company was doing, because they were getting fees, they were getting commissions, they were getting percentages of deals. Those are the very same people the Republicans say now that Mr. and Mrs. JONES and Mr. and Mrs. Smith ought to go to and trust that they are going to give them independent advice.

The Democratic bill says you can go to those people, you can make them available, but you also must make an independent adviser available to these people as they plan for their retirements.

When things go wrong for people in their retirement plans, as they did over the last couple of years, and you are 50 or 55 years old, you do not have much chance to make it up.

Again, we have all heard from our constituents about people who thought they were going to retire a year ago, a year and a half ago. From Pacific Gas and Electric, the Portland company, not the California one, a person came before our committee, the Committee on Education and the Workforce, who had $650,000 in Enron stock. He and his wife bought a small farm that they were going to use to run a care center for retarded children. By the time they got to our committee, he had $6,000 in stock. He is 60 years old. Where does he go to get back his money? Where does he go to get made whole?

Well, unless we want that to happen to another generation of workers planning for their retirement, planning for their families, unless we want that to happen again, we have got to support the Democratic substitute, because it is about justice, it is about fairness and it is about getting away from the conflicted advice, from the manipulation, from the dishonesty, from the criminal activity of the financial markets.

Mr. Speaker, $7 trillion was lost in the markets, $7 trillion. These are the people who want to take you out of Social Security and put you into that market. Social Security did not lose a dime. Wall Street lost $7 trillion, and hundreds and thousands and millions of Americans had their entire retirement future changed overnight.

We thought, well, that is the free enterprise system. That is the market system. But what we find out now every day is, no, like the California energy crisis, that was a manipulated system, that was a dishonest system, that was a criminal system.

All the Democratic bill says is give people some notice, give people some rights, give people control over their money so they can escape the ship. The CEOs, the board presidents, the presidents of companies, they are heading for the lifeboats. They do not even have the decency to hit the alarm bell to tell you the ship is going down.

We say at least you have to sound the alarm and tell the workers that they may want to jump too. That is the decent thing to do if you care about your workers, if you respect them, if you appreciate what they have done for the corporations. But that is not what is going on in America today, and that is not what will go on in America under the Republican bill.

Mr. Speaker, you must vote for the Democratic substitute if you believe that workers and their families are entitled to the decent protections for their retirement funds. I urge Members to vote for the Democratic substitute.

Mr. SAM JOHNSON of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am glad that was brought out. All of the reasons to not vote for this substitute, we just heard them. The Democrat substitute unwisely expands remedies available under ERISA. Under the Democrat substitute, employers, administrators and service providers can expect a wave of new litigation from participants alleging economic and noneconomic losses stemming from ERISA violations. It can only lead to higher costs. Employers will become more reluctant to offer retirement savings plans to their workers. ERISA already provides for comprehensive penalties and enforcement mechanisms in the case of wrongdoing.

The Democrat substitute also tries to reform salaries and corporate governance through the guise of pension reform. These provisions regarding corporate compensation are not really about pensions; they are about punishment for corporations.

The Democrat punitive corporate provision will not enhance pension coverage or protection for one rank-and-file member. Instead, it will only make it likely that corporations will be discouraged from offering pensions because of the complex and heavy-handed pension rules.

Mr. Speaker, I urge a vote against the Democrat substitute.

Mr. Speaker, I yield back the balance of my time.

Mr. ANDREWS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would urge our colleagues to vote in favor of the Miller substitute. If there is one asset that should be sacrosanct, if there is one asset that should be solid as a rock, it is our pensions. Prior to 1974, there were numerous problems with pensions as corrupt or incompetent boards of trustees mismanaged workers' funds.

Twenty-nine years ago this Congress did something about that by passing the ERISA law. Since then, scandals and misappropriation of pension funds have been few and far between. They have been rare, and pensions have been largely safe.

But there is a new kind of pension. It is a self-directed pension account, commonly called a 401(k). The problem with the 401(k) has admittedly been that workers who do not have sound advice have sometimes made unsound decisions and lost their money.

There is no dispute that there is a need to provide solid and sound investment advice, but there is a strong dispute about how to do so. The substitute provides for advice; but frankly, it favors independent advice so the advice given is not given from the point of view of self-interest. The substitute provides a remedy.

□ 1515

When someone entrusted with fiduciary responsibility under the ERISA law does wrong by the pensioner or by the worker, there are consequences. My friend from Texas a few minutes ago said that there would be an expansion of remedies under ERISA. He is absolutely correct, because as the workers at Enron can tell us, the remedies that the present law contains do not do them very much good at all when they see their future security evaporate in the new pension scandals of our time.

The Miller substitute provides for sound investment advice, it ceases the practice of fraudulent misrepresentation during collective bargaining, it stops secret pension deals on behalf of highly compensated employees and executives, and it provides for meaningful remedies for those who have been wronged. It stops the abuse of cash balance plans and makes sure that every American pensioner is made whole. It is a realistic and meaningful response to the scandals of the last 24 to 36 months.

Mr. Speaker, I would urge all of my colleagues to vote ''yes'' in favor of the Miller substitute.

Mr. Speaker, I yield back the balance of my time.

Mr. BOEHNER. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, there is a lot that has been said here today about the need for pension reform. Certainly, in the wake of the Enron and WorldCom scandals and the collapse of the stock market, Congress had a duty and a responsibility to look at our pension system, and we did. That was over a year ago. Out of that we learned that there were some deficiencies in our current pension system, such as the fact that company insiders could sell the company stock during a blackout period, while employees could not sell stock in their 401(k) plan. That has been fixed and signed into law. We found that there was no notice of a potential blackout period, not enough notice to employees of these blackout periods. Again, that has been fixed, both issues signed into law in the Sarbanes-Oxley bill.

But there are other issues out there that need to be addressed, and I think the underlying bill addresses them in a fair and expansive way. With all due respect to my friends on the other side, the substitute that we have before us is nothing more than overkill.

Now, if we are worried about people's pensions in America, then people who have pensions in America ought to be really worried about the substitute that we have before us, because if the substitute were to become law, virtually no employer in America could offer their employees pensions. And that is not an exaggeration at all.

Pension plans are voluntary plans offered by employers to their employees, and the fact that they are voluntary means that we have to walk a delicate line. All one has to do is look at the regulatory impact, the legislative impact, well-meaning, well-intentioned during the 1980s that Congress and the agencies imposed on defined benefit plans. We nearly are making them extinct because of the cost, the litigation, and the regulatory nightmare that is involved with offering a traditional defined benefit plan. That is why we see this huge conversion from defined benefit plans, the traditional plan, to defined contribution plans like 401(k) plans. And nothing that we do here today, in my view, is going to slow that conversion down.

And for many of us who are concerned about defined benefit plans, the traditional benefit plans, we ought not take up the issue that is contained in the substitute that would defy the conversion to a cash balance plan. A cash balance pension plan is a defined benefit plan. Those employers and those employees are covered under the Pension Benefit Guaranty Corporation. They pay premiums to the employer, and the employee's pension is protected, and the cash balance plan is protected there. And there has been no convergence of these over the last 2 years, as there is a moratorium in effect as the Treasury Department and others try to determine what the appropriate rules should be for conversions.

Well, let us be honest. There have been over 500 conversions over the last 15 years. In virtually every single one of them, the employer made every employee whole. And it is almost impossible to find a case where an employer did not keep an employee whole. And, as we have heard before from the gentleman from Texas (Mr. JOHNSON), 80 percent of workers do better under cash balance plans than under traditional plans. Let us not forget, under a traditional plan, if you are a younger worker and you leave, you take nothing with you, zero. Under a cash balance plan, if you are a younger worker and you change jobs, you can take the net benefits that you have got vested and move them just like you can with a 401(k) account.

So we can sit here and castigate one or two examples of companies who tried to do it the wrong way, who fixed it, but let us not castigate the other 500 plus employers across the country who made these conversions and did them successfully, working with their employees.

When it is all said and done, Mr. Speaker, we want to encourage more employers to cover more of their employees with pension plans. We will not accomplish that goal, and that is a bipartisan goal, if we overregulate and drive up the cost of operating these plans. The substitute offered by my friends across the aisle will do just that. It is overkill. It should be defeated, and we should pass the underlying bill.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. QUINN). Pursuant to House Resolution 230, the previous question is ordered on the bill, as amended, and on the further amendment by the gentleman from New Jersey (Mr. ANDREWS).

The question is on the amendment in the nature of a substitute offered by the gentleman from New Jersey (Mr. ANDREWS).

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. ANDREWS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 193, nays 236, not voting 5, as follows:

[Roll No. 187]

YEAS—193

Abercrombie	Brown (OH)	Davis (TN)
Ackerman	Brown, Corrine	DeFazio
Allen	Brown-Waite, Ginny	DeGette
Andrews	Capps	Delahunt
Baca	Capuano	DeLauro
Baird	Cardin	Deutsch
Baldwin	Cardoza	Dicks
Ballance	Carson (IN)	Dingell
Becerra	Case	Doggett
Bell	Clay	Doyle
Bereuter	Clyburn	Edwards
Berkley	Conyers	Emanuel
Berman	Cooper	Engel
Berry	Costello	Eshoo
Bilirakis	Crowley	Etheridge
Bishop (GA)	Cummings	Evans
Bishop (NY)	Davis (AL)	Farr
Blumenauer	Davis (CA)	Fattah
Boswell	Davis (FL)	Filner
Boucher	Davis (IL)	Ford
Brady (PA)		Frank (MA)

Frost
Gonzalez
Gordon
Green (TX)
Grijalva
Gutierrez
Harman
Hastings (FL)
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kleczka
Kucinich
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Lynch
Majette
Maloney
Markey
Marshall
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Petri
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rodriguez
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sanchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tauscher
Taylor (MS)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velazquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NAYS—236

Akin
Alexander
Bachus
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Biggert
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carson (OK)
Carter
Castle
Chabot
Chocola
Coble
Cole
Collins
Combest
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
DeMint
Diaz-Balart, L.
Diaz-Balart, M.
Dooley (CA)
Doolittle
Dreier
Duncan
Dunn
Ehlers
Emerson
English
Everett
Feeney
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Goss
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hill
Hobson
Hoekstra
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Janklow
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
Matheson
McCotter
McCrery
McHugh
McInnis
McKeon
Mica
Miller (FL)
Miller (MI)
Moore
Moran (KS)
Murphy
Musgrave
Myrick
Nethercutt
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Pickering
Pitts
Platts
Pombo
Porter
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stenholm
Sullivan
Sweeney
Tancredo
Tanner
Tauzin
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Turner (TX)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)

NOT VOTING—5

Aderholt
Gephardt
Miller, Gary
Schrock
Young (FL)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. QUINN) (during the vote). The Chair would remind Members there are 2 minutes remaining in this vote.

□ 1542

Messrs. SOUDER, FRANKS of Arizona, GINGREY, SHAW, CARSON of Oklahoma, TAUZIN and LEWIS of California changed their vote from ''yea'' to ''nay.''

Messrs. BILIRAKIS, PETRI, THOMPSON of Mississippi, SNYDER and CROWLEY changed their vote from ''nay'' to ''yea.''

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

Stated against:

Mr. ADERHOLT. Mr. Speaker, on rollcall No. 187 I was inadvertently detained. Had I been present, I would have voted ''nay.''

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. GEORGE MILLER OF CALIFORNIA

Mr. GEORGE MILLER of California. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. GEORGE MILLER of California. I am, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. GEORGE MILLER of California moves to recommit the bill H.R. 1000 to the Committee on Education and the Workforce with instructions to report the same back to the House forthwith with the following amendment:

Page 92, insert after line 21 the following new section:

SEC. 217. PROTECTION OF PARTICIPANTS FROM CONVERSIONS TO HYBRID DEFINED BENEFIT PLANS.

(a) AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) ELECTION TO MAINTAIN RATE OF ACCRUAL IN EFFECT BEFORE PLAN AMENDMENT.—Section 204(b)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(b)(1)) is amended by adding at the end the following new subparagraph:

''(I)(i) Notwithstanding the preceding subparagraphs, in the case of a plan amendment to a defined benefit plan—

''(I) which has the effect of converting the plan to a plan under which the accrued benefit is expressed to participants and beneficiaries as an amount other than an annual benefit commencing at normal retirement age (or which has a similar effect as determined under regulations issued under clause (iii)), and

''(II) which has the effect of reducing the rate of future benefit accrual of 1 or more participants,

such plan shall be treated as not satisfying the requirements of this paragraph unless such plan meets the requirements of clause (ii).

''(ii) A plan meets the requirements of this clause if the plan provides each participant who has attained 10 years of service (as determined under section 203) under the plan at the time such amendment takes effect with—

''(I) notice of the plan amendment indicating that it has such effect, including a comparison of the present and projected values of the accrued benefit determined both with and without regard to the plan amendment, and

''(II) an election, on the date of the conversion, to either receive benefits under the terms of the plan as in effect on or after the effective date of such plan amendment or to receive benefits under the terms of the plan as in effect immediately before the effective date of such plan amendment (taking into account all benefit accruals under such terms since such date).

''(iii) The Secretary shall issue regulations under which any plan amendment which has an effect similar to the effect described in clause (i)(I) shall be treated as a plan amendment described in clause (i)(I). Such regulations may provide that if a plan sponsor represents in communications to participants and beneficiaries that a plan amendment has an effect described in the preceding sentence, such plan amendment shall be treated as a plan amendment described in clause (i)(I).''.

(2) EARLY RETIREMENT SUBSIDY TAKEN INTO ACCOUNT FOR PURPOSES OF OPENING BALANCE OF HYBRID DEFINED BENEFIT PLAN.—Section 204(g) of such Act (29 U.S.C. 1054(g)) is amended by adding at the end the following new paragraph:

''(6) In the case of a plan amendment to a defined benefit plan which has the effect of converting the plan to a plan under which the accrued benefit is expressed to participants and beneficiaries as an amount other than an annual benefit commencing at normal retirement age (or a plan amendment to such plan having a similar effect as determined under regulations issued under subsection (b)(1)(I)(iii)), such amendment shall not be treated as reducing accrued benefits merely because under such amendment any early retirement benefit or retirement-type subsidy (within the meaning of paragraph (2)(A)) is taken into account for purposes of the opening balance of the amended plan.''.

(3) INTEREST RATE FOR DETERMINATIONS RELATING TO PLAN CONVERSIONS.—Section 204(g) of such Act (as amended by paragraph (2)) is amended further by adding at the end the following new paragraph:

''(7) For purposes of this subsection—

''(A) in the case of an amendment described in paragraph (1) which takes effect on or after the enactment of this paragraph,

the interest rate and mortality tables to be used in determining the present value of the accrued benefit under such amendment shall be the applicable rate and tables under section 417(e)(3) of the Internal Revenue Code of 1986 as of the date on which such amendment takes effect, and

''(B) in the case of amendments described in paragraph (1) which took effect before the enactment of this paragraph, the interest rate and mortality tables to be used in determining the present value of the accrued benefit under such amendments shall be the applicable rate and tables which were in effect under section 412(l) of the Internal Revenue Code of 1986 as of the effective date of the respective amendment.''.

(b) EFFECTIVE DATE AND RELATED RULES.—

(1) IN GENERAL.—The amendments made by this section shall apply to plan amendments taking effect after the date of the enactment of this Act.

(2) PLAN AMENDMENTS SUBJECT TO LITIGATION.—The amendments made by this section also shall apply to any plan amendment taking effect on or before the date of the enactment of this Act if—

(A) no determination letter is issued on or before such date by the Internal Revenue Service which has the effect of approving the plan amendment, and

(B) such plan amendment is, on April 8, 2003, subject to a court action based on age discrimination.

(3) SPECIAL RULE.—In the case of a plan amendment taking effect before 90 days after the date of the enactment of this Act, the requirements of section 204(b)(1)(I) of the Employee Retirement Income Security Act of 1974 (as added by this section) shall be treated as satisfied in connection with such plan amendment, in the case of any participant described in such section 204(b)(1)(I) in connection with such plan amendment, if, as of the end of such 90-day period—

(A) the notice described in clause (i)(I) of such section 204(b)(1)(I) in connection with such plan amendment has been provided to such participant, and

(B) the plan provides for the election described in clause (i)(II) of such section 204(b)(1)(I) in connection with such participant's retirement under the plan.

□ 1545

Mr. GEORGE MILLER of California (during the reading). Mr. Speaker, I ask unanimous consent that the motion to recommit be considered as read and printed in the RECORD.

The SPEAKER pro tempore (Mr. QUINN). Is there objection to the request of the gentleman from California?

There was no objection.

The SPEAKER pro tempore. The gentleman from California (Mr. GEORGE MILLER) is recognized for 5 minutes in support of his motion to recommit.

Mr. GEORGE MILLER of California. Mr. Speaker, this motion to recommit provides that workers with 10 years of service with a company would have the choice of whether or not to accept a cash balance retirement plan or a defined benefit plan when a corporation decides that they want to switch from a defined benefit plan to a cash balance plan.

We do nothing about the corporation's right to do so. That is simply up to the corporations. Many corporations are doing this in an attempt to save money. The question that my colleagues must answer is should they be able to save that money by dramatically jeopardizing the retirement nest egg and the retirement benefits of older workers in that corporation.

The last time corporations did this before the moratorium, workers lost somewhere up to 50 percent. Last time, according to the GAO, older workers lost up to 50 percent of their retirement benefits. Individuals that were 50, 55, 60 years old, they had no ability to recapture those benefits. They could not work long enough. They could not make enough money. They could not save enough in those jobs.

The question is whether we will allow them the election. Secretary Treasurer Snow said that when he was chairman of the board at CSX Corporation, he recommended and the corporation did this because it was fair. He reminded us that when Congress switched its retirement plan, we allowed every Member in Congress at that time to have an election. He said that was the fair thing to do.

He said when he was on the board of Verizon, that he insisted that they allow workers to have a choice in that plan to see which one they would do better under. The company could save the money for all new workers, and older workers would be made whole.

The gentleman from Ohio will tell my colleagues that some 500 corporations have converted, and they have made workers whole. That is because that is the law. They are changing the law. They will no longer be required to do that under the law.

When Jesse James and Billy the Kid and Bonnie and Clyde stole the life savings of people in this country, we hunted them down like dogs. Right now there are 300 corporations that have filed notice all over the country, all different sizes, affecting thousands of workers, that they are going to convert immediately upon the new Treasury ruling to a cash balance system. The question is whether or not we will protect these people against having their retirement benefits looted.

After a person gives this kind of service to a company, and they are too old to recoup it, they ought to make sure that they do not lose that benefit. That is what this amendment does, and I am going to tell my colleagues, for those who do not think this will affect them, several years ago we had this operation before the moratorium, IBM, Kodak and others, and it blew up. On a bipartisan vote of over 300 Members of Congress, we sought to end that practice.

The Clinton administration put on a moratorium. Those companies ended up giving their workers an election. It is the just and fair thing to do. There is no other remedy other than this amendment for those workers if the Treasury Department decides, as their original proposal did, that it did not matter whether we gave workers a choice or not.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield to the gentleman from Illinois (Mr. EMANUEL).

(Mr. EMANUEL asked and was given permission to revise and extend his remarks.)

Mr. EMANUEL. Mr. Speaker, I rise in strong support of the Democratic substitute to H.R. 1000, the Pension Security Act.

The Republican bill just does not do enough to take care of retirement security for American families. In particular, I support the substitute's fight against cash balance conversion, which pulls the rug out from under employees midcareer.

I worked on the moratorium that my colleague talked about when I was in the White House. Today 500 companies have converted to cash balance. There have been more than 1,000 age discrimination claims filed with the EEOC over these plans. Three hundred fifty companies are on the sidelines waiting to convert, which affects thousands upon thousands of employees.

Cash balance conversion can be done right. They are a good financial instrument if done effectively, but if we create winners and losers, that is the wrong approach.

The right approach is to include a grandfather clause to ensure workers who are 55 or older have a choice, that can work both for the employees and the employers. There is a right way and a wrong way to go about this.

I want to also speak about another situation in the bill. Even worse than the cash balance, the bill fails to require companies to notify employees when executives dump company stock or provide adequate notice to employees of excessive stock holdings. This bill treats the CEO retirement one way and treats employees' retirement another way: Two sets of books, two sets of standards and two sets of values.

Mr. Speaker, in contrast, the Democratic substitute does two important things. It protects workers when their pensions are converted to cash balance plans, and it ensures that workers' and executives' pension plans are treated equally.

Mr. BOEHNER. Mr. Speaker, I am opposed to the motion.

The SPEAKER pro tempore. The gentleman from Ohio is recognized for 5 minutes.

Mr. BOEHNER. Mr. Speaker, I appreciate the indulgence of the Members.

We all know that pension plans are voluntarily offered by employers to their employees. For those of us that have worked in the pension area for some time, we know that we have to walk a very delicate line in terms of the regulations that we put around these plans so that we do not drive employers and their employees out of the system.

We spend a lot of time on a bipartisan basis here trying to find ways to encourage more companies to offer plans to their employees. Most of those plans today would be defined contribution plans, like 401(k) plans.

The traditional defined benefit plan that we would have and all Federal employees would have is in serious trouble in America today. In 1986, we had

176,000 defined benefit plans in America. Today, we have less than 50,000, and the conversion from traditional pension plans to 401(k)-type plans is going to continue. Why? We have so overregulated and driven up the cost of offering defined benefit plans that these conversions continue.

The whole issue of cash balance plans boils down to this: Cash balance plans are a way to save defined benefit plans. Cash balance plans are those where employers pay premiums into the Pension Benefit Guaranty Corporation. Employees who have cash balance plans are protected by the Pension Benefit Guaranty Corporation. So for those of us who have tried to find ways to help save the traditional defined benefit plan, the cash balance conversions are a way to save them.

There have been over 500 conversions over the last 15 years. Virtually every single one of them have been successful, where employers have found ways to make sure that all employees are made whole. But do not be misunderstood. Eighty percent of employees benefit greater under a cash balance plan than they would under a defined benefit plan, and for younger workers who change jobs under a defined benefit plan, a traditional plan, they do not get to move anything with them, zero, but if they are vested in their cash balance plan, they can move that, and it is much more portable than a traditional plan.

What the gentleman from California (Mr. GEORGE MILLER) seeks to do is to require employers to offer two plans, the traditional plan and the cash balance plan. What this means is that the employer has to continue offering both plans, which will mean we will not have conversions, and if we do not have conversions, here is what will happen: The defined benefit plans will continue to be scrapped. Let us watch when the market begins to recover and the plans are healthier, companies will eliminate their defined benefit plan and move to a defined contribution plan, like a 401(k) plan. I do not think that is what most employees in America want.

I would ask all of my colleagues, because on a bipartisan basis we have worked to make sure that these cash balance plans worked, and they worked fairly, my colleagues should also know there have been no conversions the last 2 years, and that is because there is a moratorium in effect. The Treasury Department had regulations out for comment. They got lots of comments. They withdrew them. They are continuing to work to find the right set of regulations to regulate these conversions to cash balance plans. Let us let them do the technical work.

For Members on both sides of the aisle who have worked on these pension issues in a bipartisan way, we understand that these conversions will help save these plans. The underlying bill passed this House with 209 Republican votes and 46 Democrat votes a year ago. The underlying bill is a good bill that would help protect the pensions of American workers. Let us stand up for American workers today.

Defeat the motion to recommit and vote for the underlying bill.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. GEORGE MILLER of California. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for any electronic vote on the question of passage.

The vote was taken by electronic device, and there were—yeas 202, nays 226, not voting 6, as follows:

[Roll No. 188]

YEAS—202

Abercrombie	Frost	Michaud
Ackerman	Gonzalez	Millender-McDonald
Alexander	Goode	Miller (NC)
Allen	Gordon	Miller, George
Andrews	Green (TX)	Mollohan
Baca	Grijalva	Moore
Baird	Gutierrez	Moran (VA)
Baldwin	Harman	Murtha
Ballance	Hastings (FL)	Nadler
Becerra	Hill	Napolitano
Bell	Hinchey	Neal (MA)
Berkley	Hinojosa	Oberstar
Berman	Hoeffel	Obey
Berry	Holden	Olver
Bishop (GA)	Holt	Ortiz
Bishop (NY)	Honda	Ose
Blumenauer	Hooley (OR)	Owens
Boswell	Hoyer	Pallone
Boucher	Inslee	Pascrell
Boyd	Israel	Pastor
Brady (PA)	Jackson (IL)	Payne
Brown (OH)	Jackson-Lee (TX)	Pelosi
Brown, Corrine	John	Petri
Capps	Johnson, E. B.	Pomeroy
Capuano	Jones (OH)	Price (NC)
Cardin	Kanjorski	Rahall
Cardoza	Kaptur	Rangel
Carson (IN)	Kennedy (RI)	Reyes
Carson (OK)	Kildee	Rodriguez
Case	Kilpatrick	Ross
Clay	Kind	Rothman
Clyburn	Kleczka	Roybal-Allard
Conyers	Kucinich	Ruppersberger
Cooper	Lampson	Rush
Costello	Langevin	Ryan (OH)
Crowley	Lantos	Sabo
Cummings	Larsen (WA)	Sanchez, Linda T.
Davis (AL)	Larson (CT)	Sanchez, Loretta
Davis (CA)	Lee	Sanders
Davis (FL)	Levin	Sandlin
Davis (IL)	Lewis (GA)	Schakowsky
Davis (TN)	Lipinski	Schiff
DeFazio	Lofgren	Scott (GA)
DeGette	Lowey	Scott (VA)
Delahunt	Lynch	Serrano
DeLauro	Majette	Sherman
Deutsch	Maloney	Skelton
Dicks	Markey	Slaughter
Dingell	Marshall	Smith (WA)
Doggett	Matheson	Snyder
Dooley (CA)	Matsui	Solis
Doyle	McCarthy (MO)	Spratt
Edwards	McCarthy (NY)	Stark
Emanuel	McCollum	Strickland
Engel	McDermott	Stupak
Eshoo	McGovern	Tanner
Etheridge	McIntyre	Tauscher
Evans	McNulty	Taylor (MS)
Farr	Meehan	Thompson (CA)
Fattah	Meek (FL)	Thompson (MS)
Filner	Meeks (NY)	Tierney
Ford	Menendez	Turner (TX)
Frank (MA)	Waters	Whitfield
Udall (CO)	Watson	Woolsey
Udall (NM)	Watt	Wu
Van Hollen	Waxman	Wynn
Velazquez	Weiner	
Visclosky	Wexler	

NAYS—226

Aderholt	Gallegly	Nunes
Akin	Garrett (NJ)	Nussle
Bachus	Gerlach	Osborne
Baker	Gibbons	Otter
Ballenger	Gilchrest	Oxley
Barrett (SC)	Gillmor	Paul
Bartlett (MD)	Gingrey	Pearce
Barton (TX)	Goodlatte	Pence
Bass	Goss	Peterson (MN)
Beauprez	Granger	Peterson (PA)
Bereuter	Graves	Pickering
Biggert	Green (WI)	Pitts
Bilirakis	Greenwood	Platts
Bishop (UT)	Gutknecht	Pombo
Blackburn	Hall	Porter
Blunt	Harris	Portman
Boehlert	Hart	Pryce (OH)
Boehner	Hastings (WA)	Putnam
Bonilla	Hayes	Quinn
Bonner	Hayworth	Radanovich
Bono	Hefley	Ramstad
Boozman	Hensarling	Regula
Bradley (NH)	Herger	Rehberg
Brady (TX)	Hobson	Renzi
Brown (SC)	Hoekstra	Reynolds
Brown-Waite, Ginny	Hostettler	Rogers (AL)
Burgess	Houghton	Rogers (KY)
Burns	Hulshof	Rogers (MI)
Burr	Hunter	Rohrabacher
Burton (IN)	Hyde	Ros-Lehtinen
Buyer	Isakson	Royce
Calvert	Issa	Ryan (WI)
Camp	Istook	Ryun (KS)
Cannon	Janklow	Saxton
Cantor	Jenkins	Sensenbrenner
Capito	Johnson (CT)	Sessions
Carter	Johnson (IL)	Shadegg
Castle	Johnson, Sam	Shaw
Chabot	Jones (NC)	Shays
Chocola	Keller	Sherwood
Coble	Kelly	Shimkus
Cole	Kennedy (MN)	Shuster
Collins	King (IA)	Simmons
Combest	King (NY)	Simpson
Cox	Kingston	Smith (MI)
Cramer	Kirk	Smith (NJ)
Crane	Kline	Smith (TX)
Crenshaw	Knollenberg	Souder
Cubin	Kolbe	Stearns
Culberson	LaHood	Stenholm
Cunningham	Latham	Sullivan
Davis, Jo Ann	LaTourette	Sweeney
Davis, Tom	Leach	Tancredo
Deal (GA)	Lewis (CA)	Tauzin
DeLay	Lewis (KY)	Taylor (NC)
DeMint	Linder	Terry
Diaz-Balart, L.	LoBiondo	Thomas
Diaz-Balart, M.	Lucas (KY)	Thornberry
Doolittle	Lucas (OK)	Tiahrt
Dreier	Manzullo	Tiberi
Duncan	McCotter	Toomey
Dunn	McCrery	Turner (OH)
Ehlers	McHugh	Upton
Emerson	McInnis	Vitter
English	McKeon	Walden (OR)
Everett	Mica	Walsh
Feeney	Miller (FL)	Wamp
Ferguson	Miller (MI)	Weldon (FL)
Flake	Moran (KS)	Weldon (PA)
Fletcher	Murphy	Weller
Foley	Musgrave	Wicker
Forbes	Myrick	Wilson (NM)
Fossella	Nethercutt	Wilson (SC)
Franks (AZ)	Ney	Wolf
Frelinghuysen	Northup	Young (AK)
	Norwood	

NOT VOTING—6

Gephardt	Miller, Gary	Towns
Jefferson	Schrock	Young (FL)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. QUINN) (during the vote). There are 2 minutes remaining in this vote.

□ 1612

Messrs. SMITH of Michigan, GALLEGLY, and CRAMER changed their vote from ''yea'' to ''nay.''

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. GEORGE MILLER of California. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. This is a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 271, nays 157, not voting 6, as follows:

[Roll No. 189]

YEAS—271

Aderholt	Ehlers	Latham
Akin	Emerson	LaTourette
Bachus	English	Leach
Baker	Everett	Lewis (CA)
Ballenger	Feeney	Lewis (KY)
Barrett (SC)	Ferguson	Linder
Bartlett (MD)	Flake	Lipinski
Barton (TX)	Fletcher	LoBiondo
Bass	Foley	Lucas (KY)
Beauprez	Forbes	Lucas (OK)
Bell	Fossella	Maloney
Bereuter	Franks (AZ)	Manzullo
Berry	Frelinghuysen	Marshall
Biggert	Frost	Matheson
Bilirakis	Gallegly	McCarthy (NY)
Bishop (UT)	Garrett (NJ)	McCotter
Blackburn	Gerlach	McCrery
Boehlert	Gibbons	McHugh
Boehner	Gilchrest	McInnis
Bonilla	Gillmor	McIntyre
Bonner	Gingrey	McKeon
Bono	Gonzalez	Mica
Boozman	Goode	Miller (FL)
Boswell	Goodlatte	Miller (MI)
Boyd	Goss	Moore
Bradley (NH)	Granger	Moran (KS)
Brady (TX)	Green (TX)	Murphy
Brown (SC)	Green (WI)	Musgrave
Brown-Waite, Ginny	Greenwood	Myrick
Burgess	Hall	Neal (MA)
Burns	Harman	Nethercutt
Burr	Harris	Ney
Burton (IN)	Hart	Northup
Buyer	Hastings (WA)	Norwood
Calvert	Hayes	Nunes
Camp	Hayworth	Nussle
Cannon	Hefley	Osborne
Cantor	Hensarling	Ose
Capito	Herger	Otter
Cardoza	Hill	Oxley
Carson (IN)	Hobson	Paul
Carson (OK)	Hoekstra	Pearce
Carter	Holden	Pence
Castle	Holt	Peterson (MN)
Chabot	Hooley (OR)	Peterson (PA)
Chocola	Hostettler	Petri
Coble	Houghton	Pickering
Cole	Hulshof	Pitts
Collins	Hunter	Platts
Combest	Hyde	Pombo
Costello	Isakson	Pomeroy
Cox	Israel	Porter
Cramer	Issa	Portman
Crane	Istook	Price (NC)
Crenshaw	Janklow	Pryce (OH)
Crowley	Jenkins	Putnam
Cubin	John	Quinn
Culberson	Johnson (CT)	Radanovich
Cunningham	Johnson (IL)	Ramstad
Davis, Jo Ann	Johnson, Sam	Regula
Davis, Tom	Jones (NC)	Rehberg
Deal (GA)	Keller	Renzi
DeLay	Kelly	Reynolds
DeMint	Kennedy (MN)	Rogers (AL)
Diaz-Balart, L.	Kind	Rogers (KY)
Diaz-Balart, M.	King (IA)	Rogers (MI)
Dooley (CA)	King (NY)	Rohrabacher
Doolittle	Kingston	Ros-Lehtinen
Dreier	Kirk	Ross
Duncan	Kline	Royce
Dunn	Knollenberg	Ruppersberger
Edwards	Kolbe	Ryan (WI)
	LaHood	Ryun (KS)
Sabo	Snyder	Turner (OH)
Sandlin	Souder	Turner (TX)
Saxton	Stearns	Upton
Scott (GA)	Stenholm	Vitter
Sensenbrenner	Sullivan	Walden (OR)
Sessions	Sweeney	Walsh
Shadegg	Tancredo	Wamp
Shaw	Tanner	Weldon (FL)
Shays	Tauscher	Weldon (PA)
Sherwood	Tauzin	Weller
Shimkus	Taylor (MS)	Whitfield
Shuster	Taylor (NC)	Wicker
Simmons	Terry	Wilson (NM)
Simpson	Thomas	Wilson (SC)
Skelton	Thornberry	Wolf
Smith (MI)	Tiahrt	Wu
Smith (NJ)	Tiberi	Young (AK)
Smith (TX)	Toomey	

NAYS—157

Abercrombie	Gutierrez	Napolitano
Ackerman	Gutknecht	Oberstar
Alexander	Hastings (FL)	Obey
Allen	Hinchey	Olver
Andrews	Hinojosa	Ortiz
Baca	Hoeffel	Owens
Baird	Honda	Pallone
Baldwin	Hoyer	Pascrell
Ballance	Inslee	Pastor
Becerra	Jackson (IL)	Payne
Berkley	Jackson-Lee (TX)	Pelosi
Berman	Jefferson	Rahall
Bishop (GA)	Johnson, E. B.	Rangel
Bishop (NY)	Jones (OH)	Reyes
Blumenauer	Kanjorski	Rodriguez
Boucher	Kaptur	Rothman
Brady (PA)	Kennedy (RI)	Roybal-Allard
Brown (OH)	Kildee	Rush
Brown, Corrine	Kilpatrick	Ryan (OH)
Capps	Kleczka	Sanchez, Linda T.
Capuano	Kucinich	Sanchez, Loretta
Cardin	Lampson	Sanders
Case	Langevin	Schakowsky
Clay	Lantos	Schiff
Clyburn	Larsen (WA)	Scott (VA)
Conyers	Larson (CT)	Serrano
Cooper	Lee	Sherman
Cummings	Levin	Slaughter
Davis (AL)	Lewis (GA)	Smith (WA)
Davis (CA)	Lofgren	Solis
Davis (FL)	Lowey	Spratt
Davis (IL)	Lynch	Stark
Davis (TN)	Majette	Strickland
DeFazio	Markey	Stupak
DeGette	Matsui	Thompson (CA)
Delahunt	McCarthy (MO)	Thompson (MS)
DeLauro	McCollum	Tierney
Deutsch	McDermott	Towns
Dicks	McGovern	Udall (CO)
Dingell	McNulty	Udall (NM)
Doggett	Meehan	Van Hollen
Doyle	Meek (FL)	Velazquez
Emanuel	Meeks (NY)	Visclosky
Engel	Menendez	Waters
Eshoo	Michaud	Watson
Etheridge	Millender-McDonald	Watt
Evans	Miller (NC)	Waxman
Farr	Miller, George	Weiner
Fattah	Mollohan	Wexler
Filner	Moran (VA)	Woolsey
Ford	Murtha	Wynn
Frank (MA)	Nadler	
Gordon		
Grijalva		

NOT VOTING—6

Blunt	Graves	Schrock
Gephardt	Miller, Gary	Young (FL)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. QUINN) (during the vote). Members are advised that less than 2 minutes remain in this vote.

□ 1619

Mr. WYNN changed his vote from ''yea'' to ''nay.''

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

CONCERNING PARTICIPATION OF TAIWAN IN THE WORLD HEALTH ORGANIZATION

Mr. ROHRABACHER. Mr. Speaker, I ask unanimous consent that the Committee on International Relations be discharged from further consideration of the Senate bill (S. 243) concerning participation of Taiwan in the World Health Organization, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 243

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONCERNING THE PARTICIPATION OF TAIWAN IN THE WORLD HEALTH ORGANIZATION (WHO).

(a) FINDINGS.—The Congress makes the following findings:

(1) Good health is important to every citizen of the world and access to the highest standards of health information and services is necessary to improve the public health.

(2) Direct and unobstructed participation in international health cooperation forums and programs is beneficial to all parts of the world, especially with today's greater potential for the cross-border spread of various infectious diseases such as the human immunodeficiency virus (HIV), tuberculosis, and malaria.

(3) Taiwan's population of 23,500,000 people is greater than that of three-fourths of the member states already in the World Health Organization (WHO).

(4) Taiwan's achievements in the field of health are substantial, including one of the highest life expectancy levels in Asia, maternal and infant mortality rates comparable to those of western countries, the eradication of such infectious diseases as cholera, smallpox, and the plague, and the first to eradicate polio and provide children with hepatitis B vaccinations.

(5) The United States Centers for Disease Control and Prevention and its Taiwan counterpart agencies have enjoyed close collaboration on a wide range of public health issues.

(6) In recent years Taiwan has expressed a willingness to assist financially and technically in international aid and health activities supported by the WHO.

(7) On January 14, 2001, an earthquake, registering between 7.6 and 7.9 on the Richter scale, struck El Salvador. In response, the Taiwanese government sent 2 rescue teams, consisting of 90 individuals specializing in firefighting, medicine, and civil engineering. The Taiwanese Ministry of Foreign Affairs also donated $200,000 in relief aid to the Salvadoran Government.

(8) The World Health Assembly has allowed observers to participate in the activities of the organization, including the Palestine Liberation Organization in 1974, the Order of Malta, and the Holy See in the early 1950s.

(9) The United States, in the 1994 Taiwan Policy Review, declared its intention to support Taiwan's participation in appropriate international organizations.

(10) Public Law 106–137 required the Secretary of State to submit a report to the Congress on efforts by the executive branch to support Taiwan's participation in international organizations, in particular the WHO.